



**PURCHASING DEPARTMENT  
REQUEST FOR PROPOSAL NO. 05RFP101205C**

**Organizational Evaluation & Service Delivery Plan to Action**

**For**

**Registration and Elections**

**RFP DUE TIME AND DATE: 11:00 A.M., November 16, 2005**  
**PURCHASING CONTACT: Malcolm Tyson at (404) 730-5811**  
**E-MAIL: [Malcolm.tyson@co.fulton.ga.us](mailto:Malcolm.tyson@co.fulton.ga.us)**

**LOCATION: FULTON COUNTY PURCHASING DEPARTMENT**  
**130 PEACHTREE STREET, S.W., SUITE 1168**  
**ATLANTA, GA 30303**

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## **SECTION 1 INTRODUCTION**

### **1.1 OVERVIEW**

Fulton County, Georgia ("County") is soliciting proposals for qualified consultants to provide an Organizational Evaluation & Service Delivery Plan of Action. Proposals will be received in the office of the Purchasing Agent, County Public Safety Building, Suite 1168, 130 Peachtree Street, S.W. Atlanta, Georgia 30303, until **11:00 AM**, local time on **November 16, 2005**.

Through the issuance of this Request For Proposal ("RFP" and/or "Proposals"), the County is soliciting Proposals from qualified firms or individuals to perform the work, in accordance with the specifications set forth in the RFP.

Proposals provided in response to this RFP that comply with the submittal requirements set forth in Section 4.0, including all forms and certifications, will be evaluated in accordance with the criteria and procedures described in Section 5.0. Based on the results of the evaluation, the County will award the contract to the most advantageous Proposer based on the cost and the evaluation factors set forth in the RFP.

### **1.2 BACKGROUND**

The national and local shift from quantitative to qualitative assessments provides the Fulton County Registration and Elections Department with an opportunity to reexamine its current organizational structure, priorities and practices, and existing service delivery system; harness and build on existing human capital and financial resources; more keenly focus on changing federal and state laws governing elections, emerging and future needs within our communities; and to put forth short & long range plans to coincide with the department's vision and mission.

### **1.3 SCOPE OF REQUESTED SERVICES**

#### **Organizational Evaluation**

- a. Assess/evaluate Departments current organizational structure
- b. Assess/evaluate Departments existing delivery systems
- c. Benchmark its current structure and service delivery system with other local governmental Registration and Election Departments
- d. Identify service gaps
- e. Assist the Department in reevaluating/reaffirming its current vision and mission
- f. Anticipate social, environmental, and economic changes within the community that impact future service delivery

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- g. Anticipate changes in federal, state and local law that impact future service delivery
  - h. Assist the Department to develop core strategies to address future needs
  - i. Assist the Department to develop new goals and objectives to address future needs.

#### **Service Delivery Plan of Action**

- a. Work in concert with the Department Management Team to establish a Service Delivery Plan of Action incorporating identified changes and suggestions garnered from the above components outlining the organizational evaluation process
- b. Produce all written materials necessary to facilitate the development of Plan of Action
- c. Produce timely written summary reports, updates, and draft documents as needed
- d. Produce a written Service Delivery Plan of Action document reflective of the above process

### **1.4 PROPOSAL DUE DATE**

All proposals are due in the Purchasing Department of Fulton County located in the Public Safety Building, Suite 1168, 130 Peachtree St, S.W., Atlanta Georgia 30303 on or before **November 16, 2005 at 11:00 A.M.**, legal prevailing time. All submitted proposals will be time and date stamped according to the clock at the front desk of the Fulton County Purchasing Department. Any proposals received after this appointed schedule will be considered late and subject to be returned unopened to the Proposer. The proposal due date can be changed only by addendum.

### **1.5 DELIVERY REQUIREMENTS**

Any proposal received after the above stipulated due date and time will not be considered and will be rejected and returned. It shall be the sole responsibility of the Proposer to have his/her proposal delivered to the Fulton County Department of Purchasing for receipt on or before the above stipulated due date and time. If a proposal is sent by U.S. Mail, the proposer shall be responsible for its timely delivery to the Department of Purchasing.

### **1.6 CONTACT PERSON AND INQUIRIES**

Information regarding the proposal, either procedural or technical, may be obtained by contacting Malcolm Tyson, Assistant Purchasing Agent at (404) 730-5811, Fulton County Department of Purchasing. Information regarding the

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proposal requirements may be obtained using the following procedure: All inquiries must be submitted in writing to:

Fulton County Department of Purchasing  
Attn: Malcolm Tyson, Assistant Purchasing Agent  
130 Peachtree Street S.W., 1168  
Atlanta, GA 30303  
(404) 730-5811 Telephone  
(404) 335-5808 Fax

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## 2 INSTRUCTIONS TO PROPOSERS

### 2.1 PROCUREMENT PROCESS

The procurement will be on a formally advertised basis. All technical requirements, unless otherwise specified, must be met, or be capable of being met by the Proposer or their proposal will be disqualified as being non-responsive.

### 2.2 CONTRACT DEFINITIONS

In addition to any other terms that may be defined in this solicitation, the following terms have the following meaning:

Addendum – Revision to the RFP documents issued by the County prior to the receipt of proposals.

Agreement – refers to the executed contract between the County and Contracting Entity.

County – Fulton County Government and its authorized representatives.

Contact Person – Purchasing staff designated by the Fulton County Department of Purchasing to submit any questions and suggestions to.

Owner – Fulton County Government

Scope of Work – All the services specified, indicated, shown, or contemplated by the Contract, and furnishing by the Contractor of all materials, equipment, labor, methods, processes, construction and manufacturing materials and equipment, tools, plants, supplies, power, water, transportation and other things necessary to complete such services in accordance with the Contract.

### 2.3 NO CONTACT DURING PROCUREMENT PROCESS

It is the policy of Fulton County that the evaluation and award process for County contracts shall be free from both actual and perceived impropriety, and that contacts between potential vendors and County officials, elected officials and staff regarding pending awards of County contracts shall be prohibited.

- A. No person, firm, or business entity, however situated or composed, obtaining a copy of or responding to this solicitation, shall initiate or continue any verbal or written communication regarding this solicitation with any County officer, elected official, employee, or designated County

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representative, between the date of the issuance of this solicitation and the date of the County Manager's recommendation to the Board of Commissioners for award of the subject contract, except as may otherwise be specifically authorized and permitted by the terms and conditions of this solicitation.

- B. All verbal and written communications initiated by such person, firm, or entity regarding this solicitation, if same are authorized and permitted by the terms and conditions of this solicitation, shall be directed to the Purchasing Agent.
- C. Any violation of this prohibition of the initiation or continuation of verbal or written communications with County officers, elected officials, employees, or designated County representatives shall result in a written finding by the Purchasing Agent that the submitted bid or proposal of the person, firm, or entity in violation is "non-responsive", and same shall not be considered for award.

## **2.4 CLARIFICATION & ADDENDA**

Proposers may submit requests for clarifications or interpretations regarding this RFP and the Contract. Proposers must prepare such requests in writing for the County's consideration as set forth in this section of this RFP. While the County has not placed an initial limitation on the number of requests which can be submitted, Proposers are cautioned that if Proposers do not request meaningful clarifications or interpretations in an organized manner (e.g., limited frequency of requests), the County will set restrictions on the frequency and number of requests permitted. The County will not respond to requests received after **November 2, 2005 at 5:00 P.M.** local prevailing time. Proposers are advised that this section places no obligation on the part of the County to respond to any or all requests for clarification or interpretation, and that the County's failure to respond to any such request will not relieve the Proposer of any obligations or conditions required by this RFP. **Fulton County' official response to any inquiries will be posted to the county's website at [www.co.fulton.ga.us](http://www.co.fulton.ga.us), under Bid Opportunities for that bid.**

Requests for clarification or interpretation regarding this RFP shall only be submitted in writing (letter, fax or email) to:

**Fulton County Department of Purchasing**  
**Attn: Malcolm Tyson**  
**Public Safety Building**  
**130 Peachtree Street S.W. Suite 1168**  
**Atlanta GA 30303**  
**Email: [Malcolm.tyson@co.fulton.ga.us](mailto:Malcolm.tyson@co.fulton.ga.us)**  
**(404) 730-5811 Telephone**  
**(404) 335-5808 Fax**

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**RE: 05RFP101205C**

**Organizational Evaluation & Service Delivery Plan of Action**

All responses to written requests for clarification, interpretation, or additional information will be distributed as addenda to this RFP to all persons registered with the County to have received a copy of the RFP.

No oral interpretation, instruction, or information concerning this RFP given by any employee or agent of the County shall be binding on the County. Proposers who submit a Proposal in reliance on any such oral information risk having their response to this RFP deemed non-responsive by the County. Only written responses issued by addendum to this RFP should be considered by the Proposers.

During the period provided for the preparation of Proposals, the County may issue addenda to this RFP. These addenda will be numbered consecutively and will be distributed to those who have been issued a copy of this RFP. Additionally, the addenda will be posted on the Fulton County website, [www.co.fulton.ga.us](http://www.co.fulton.ga.us). These addenda will be issued by, or on behalf of, the County and will constitute a part of this RFP. Each Proposer is required to acknowledge by submitting an executed acknowledgment form included as Technical Proposal Form 2. This acknowledgment shall include all addenda distributed prior to the Proposal Submission Date. All responses to this RFP shall be prepared with full consideration of the addenda issued prior to the Proposal Submission Date.

**2.5 TERM OF CONTRACT**

The initial term of the contract shall be for a one (1) year term, with two (2), one (1) year renewal options.

**2.6 REQUIRED SUBMITTALS**

This is a checklist for the forms and affidavits that must be submitted. This section does not contain instructions for submission.

- Technical Proposal
- Cost Proposal
- Certification of Acceptance of Proposal Requirements
- Receipt of Addenda
- Procurement Affidavits
  - Certification Regarding Debarment
  - Non-Collusion Affidavit of Prime Offeror
  - Non-Collusion Affidavit of Subcontractor
- Insurance and Risk Management Provisions
- Contract Compliance Forms
  - Exhibit A - Promise of Non-Discrimination

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- Exhibit B - Employment Report
  - Exhibit C - Schedule of Intended Subcontractor Utilization
  - Exhibit D - Letter of Intent to Perform As a Subcontractor
  - Exhibit E - Declaration Regarding subcontractor Practices
  - Exhibit F - Joint Venture Disclosure Affidavit
  - Equal Business Opportunity (EBO) Plan

## **2.7 PROPOSAL EVALUATION**

All proposals will be evaluated using the criteria specified in Section 4 of this RFP. Selection will include an analysis of proposals by a selection committee composed of three/two members from Registration and Elections and one/two Purchasing Staff who will review the proposal submittals in accordance with the submittal requirements and the evaluation criteria set forth in Section 4 of this RFP. The committee may request oral interviews and/or site visits.

## **2.8 DISQUALIFICATION OF PROPOSERS**

The submission of more than one (1) proposal to the County as the primary Proposer or member of a joint venture for the same work by an individual firm, partnership or corporation under the same or different names may be considered as sufficient for disqualification of a Proposer and the rejection of the proposal.

## **2.9 RESERVED RIGHTS**

The County reserves the right to accept or reject any and/or all proposals, to waive irregularities and technicalities, and to request resubmission. Any sole response that is received may or may not be rejected by the County depending on available competition and timely needs of the County. There is no obligation on the part of the County to award the contract to the lowest proposer and the County reserves the right to award the contract to the responsible proposers submitting responsive proposals with resulting agreements most advantageous and in the best interest of the County. The County shall be the sole judge of the proposals and the resulting agreements that are in its best interest and its decision shall be final. Also, the County reserves the right to make such investigation as it deems necessary to determine the ability of any proposer to perform the work or service requested. Information the County deems necessary to make this determination shall be provided by the proposer. Such information may include, but shall not be limited to, current financial statements by an independent CPA; verification of availability of personnel; and past performance records.

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## **2.10 APPLICABLE LAWS**

All applicable laws and regulations of the State of Georgia and ordinances and regulations of Fulton County shall apply. Protestors shall seek resolution of their complaints in the manner provided in the Fulton County Code of Laws §2-324 which is incorporated by reference herein.

## **2.11 MINIMUM PARTICIPATION REQUIREMENTS FOR PRIME CONTRACTORS**

Pursuant to Fulton County Code 102-357, Prime Bidders on the project must perform no less than 51% of the scope of work required under the project.

## **2.12 INSURANCE AND RISK MANAGEMENT PROVISIONS**

Insurance and Risk Management provisions and Indemnification and Hold Harmless provisions are outlined in Section 7 of this RFP.

## **2.13 ACCURACY OF RFP AND RELATED DOCUMENTS**

The County assumes no responsibility that the specified technical and background information presented in this RFP, or otherwise distributed or made available during this procurement process, is complete or accurate. Without limiting the generality of the foregoing, the County will not be bound by or be responsible for any explanation or interpretation of the Proposal documents other than those given in writing as an addendum to this RFP.

Should a recipient of this RFP find discrepancies in or omissions from this RFP and related documents, the recipient of this RFP shall immediately notify the Purchasing Contact Person identified in Section 1.10 in writing at the following address: Fulton County Purchasing Department, Public Safety Bldg, 130 Peachtree Street S.E., Suite 1168 Atlanta, GA 30303. A written addendum, if necessary, then will be made available to each recipient of this RFP.

## **2.14 RESPONSIBILITY OF PROPOSER**

Each Proposer is encouraged to conduct all necessary investigations and review all available and relevant data and information, which are necessary in its judgment in order to assume this responsibility prior to the submittal of its Proposal. Proposers are reminded of Fulton County's **"No Contact During Procurement"** policy and may only contact the person designated by the RFP.

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## **2.15 CONFIDENTIAL INFORMATION**

If any Proposal contains technical, financial, or other confidential information that the Proposer believes is exempt from disclosure, the Proposer must clearly label the specific portions sought to be kept confidential and specify on what the exemption is based. The County, at its sole discretion and subject to applicable law, will determine whether such exemption applies. The County has sole discretion to make such determination regarding the disclosure of information, and by responding to this RFP, Proposers waive any challenge to the County's decisions in this regard. Marking all or substantially all of a Proposal as confidential may result in the Proposer being deemed non-responsive to this RFP.

Notwithstanding the foregoing, Proposers recognize and agree that the County, its staff, and its Consultants will not be responsible or liable in any way for any losses that the Proposer may suffer from the disclosure of information or materials to third parties.

## **2.16 COUNTY RIGHTS AND OPTIONS**

This RFP constitutes an invitation to submit Proposals to the County. Without limitation or penalty, the County reserves and holds at its sole discretion, the following rights and options:

- This RFP does not obligate the County to select, procure or contract for any services whatsoever
- The County reserves the right to change or alter the schedule for any events associated with this procurement and, if required, notify the Proposers. A Proposer, by submitting a Proposal, agrees to be bound by any modifications made by the County
- All costs incurred by a Proposer in connection with responding to this RFP, the evaluation and selection process undertaken in connection with this procurement, and any negotiations with the County will be borne by the Proposer.
- The County reserves the right to reject all Proposals and components thereof to eliminate all Proposers responding to this RFP from further consideration for this procurement, and to notify such Proposers of the County's determination.
- The County may cancel this RFP without the substitution of another RFP and terminate this procurement at any time without any liability whatsoever.

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- The County reserves the right to waive any technicalities or irregularities in the Proposals.
  - The County reserves the right to eliminate any Proposer who submits incomplete or inadequate responses or is not responsive to the requirements of this RFP.
  - The County may request Proposers to send representatives to the County for interviews and presentations.
  - To the extent deemed appropriate by the County, the County may select and enter into discussion and negotiations with the Proposer(s) submitting Proposal(s), which are found to be reasonably susceptible for award.
  - The County reserves the right to discontinue negotiations with any selected Proposer.
  - The County reserves the right, without prior notice, to supplement, amend, or otherwise modify this RFP.
  - All Proposals (other than portions thereof subject to patent or copyright protection) become the property of the County and will not be returned, and the County reserves the right to utilize all such information contained in the Proposals without further cost to the County
  - The County may add to or delete from the Project Scope of Work set forth in this RFP.
  - Any and all Proposals not received by the Proposal Submission Date shall be rejected and returned unopened.
  - Neither the County, its staff, its representatives, nor any of its consultants or attorneys will be liable for any claims or damages resulting from the solicitation, collection, review, or evaluation of responses to this RFP.
  - The County, including its representatives and consultants, reserves the right to visit and examine any of the facilities referenced in any Proposal and to observe and investigate the operations of such facilities.
  - The County reserves the right to conduct investigations of the Proposers and their responses to this RFP and to request additional evidence to support the information included in any such response.

By responding to this RFP, Proposers acknowledge and consent to the rights and conditions set forth in this RFP.

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## **2.17 COST OF PROPOSAL PREPARATION AND SELECTION PROCESS**

Each Proposal, including preparation of all information required to be included in a Proposal pursuant to this RFP, shall be prepared at the sole cost and expense (including, but not limited to, engineering and legal costs) of the Proposer. In addition, the Proposer shall be solely responsible for all costs (including engineering and legal costs) incurred by such Proposer in connection with this selection process, including any costs incurred by the Proposer in any subsequent negotiations entered into in connection with developing the Proposal. There shall be no claims whatsoever against the County, its staff, or its consultants for reimbursement for the costs or expenses (including, but not limited to, engineering and legal costs) incurred during the preparation of the Proposal or other information required by this RFP or procurement process or in connection with the selection process or any negotiations.

## **2.18 TERMINATION OF NEGOTIATIONS**

The County at its sole discretion may, at any time, to the extent permitted by Applicable Law, exclude a Proposer from further participation in any negotiation process if the County determines that such Proposer is failing to progress in the negotiations or if the terms of its Proposal are less advantageous than those of other Proposers and such Proposer is deemed to be no longer susceptible of selection. The County will give written notice of its decision to the Proposer, which shall be sent in writing, signed by the County.

## **2.19 WAGE CLAUSE**

Pursuant to 102-391, Each Contractor shall agree that in the performance of the Contract he will comply with all lawful agreements, if any, which the Contractor had made with any association, union, or other entity, with respect to wages, salaries, and working conditions, so as not to cause inconvenience, picketing, or work stoppage.

## **2.20 IRREVOCABLE OFFER**

No bid may be modified, withdrawn, or cancelled by the bidder for sixty (60) days following the date and time designated for receipt of bids, and each bidder so agrees in submitting its bid. All adjustment factors shall remain valid during this time period unless noted otherwise.

Prior to the date and time designated for receipt of bids, a bid may be withdrawn on written or facsimile (fax) request, provided that written confirmation of any fax withdrawal over the signature of the bidder must have been mailed and postmarked on or before the date and time set for receipt of bids. A withdrawn bid may be resubmitted up to the date and time designated for receipt of bids, provided that it is then fully in conformance with these Instructions to Bidders.

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## FULTON COUNTY PURCHASING DEPARTMENT

### REQUEST FOR PROPOSAL (RFP) GENERAL REQUIREMENTS

#### 2.21 05RFP101205C - Organizational Evaluation & Service Delivery Plan of Action

The following information pertains to the submission of a proposal to Fulton County ("County"), and contains instructions on how proposals must be presented in order to be considered. If specific conditions or instructions in the text of the Request for Proposal ("RFP") conflict with the General Requirements as listed here, those conditions or instructions in the RFP shall prevail.

1. Proposals submitted in response to the attached RFP must be formatted as specified in the RFP. Additional sheets, literature, etc., should be clearly identified.
2. The original and the required number of copies of the proposal must be returned to:  
  
Fulton County Purchasing Agent  
Fulton County Purchasing Department  
130 Peachtree Street, S.W., Suite 1168  
Atlanta, Georgia 30303
3. The envelope in which the proposal is submitted must be sealed and clearly labeled with the RFP project name and number, due date and time, and the name of the company or individual submitting the proposal. Proposals must be received by the opening date and time shown on this RFP in order to be considered. The Purchasing Agent has no obligation to consider proposals which are not in properly marked envelopes. The Technical Proposal, Cost Proposal and Contract Compliance submittals shall be submitted in separate sealed envelopes. The inclusion of any cost information in the Technical Proposal may result in such proposal being rejected by the County.
4. Proposals received after the time and date specified will not be opened or considered.
5. By submitting a signed proposal, Offeror agrees to accept an award made as a result of the submission of the prices and terms contained in that proposal. Prices proposed must be audited by the Offeror to insure correctness before the proposal is submitted. Person signing the proposal is responsible for the accuracy of information in it. The specifications, provisions, and the terms and conditions of the RFP and proposal shall become a valid contract between Fulton County and the Offeror upon notice of award of contract in writing and/or issuance of a purchase order.
6. Any contract awarded as a result of this proposal, shall comply fully with all Local, State, and Federal laws and regulations.
7. Absolutely no fax proposals or reproduction proposals will be accepted, except that if multiple copies of the proposal are required, photocopies of the original may be submitted as the additional copies, provided that they are clearly marked as such.

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8. Type or neatly print company name, as well as the full legal name and title of the person signing the proposal, in all appropriate places. The Offeror's signature must be executed by a Principal of the company duly authorized to make contracts and bind the company to all terms being proposed.
  9. Proposals may be withdrawn upon receipt of a written request prior to the stated due date and time. If a firm seeks to withdraw a proposal after the due date and time, the firm must present a notarized statement indicating that an error was made, with an explanation of how it occurred. The withdrawal request must be accompanied by documentation supporting the claim. Prior to approving or disapproving the request, an opinion will be obtained from Fulton County's Legal Counsel indicating whether the firm is bound by its proposal.

Proposals for projects that are solicited pursuant to the Georgia Local Government Public Works Construction Law (O.C.G.A. § 36-91-1 et seq.) may be withdrawn as follows:

The County must advise Offerors in the request for proposals of the number of days that Offerors will be required to honor their proposals. If an Offeror is not selected within 60 days of opening the proposals, any Offeror that is determined by the governmental entity to be unlikely of being selected for contract award will be released from the proposal.

10. Show information and prices in the format requested. Prices are to be quoted F.O.B. destination, and must include all costs chargeable to the Offeror in executing the contract, including taxes. Unless otherwise provided in the Contract, Fulton County shall have no liability for any cost not included in the price. The Offeror shall provide Fulton County the benefit through a reduction in price of any decrease in the Offeror's costs by reason of tax exemptions based upon Fulton County's status as a tax-exempt entity.
11. Propose all items specified or indicate under each item what alternative is being proposed and why it should be considered in lieu of the original specification. Failures to indicate any exceptions shall be interpreted as the Offeror's intent to fully comply with the specifications as written. Conditional or qualified proposals (except as specifically allowed in the specifications) are subject to rejection in whole or in part.
12. Fulton County shall be the sole judge of the quality and the applicability of all proposals. Design, features, overall quality, local facilities, terms and other pertinent considerations will be taken into account in determining acceptability.
13. The successful Offeror must assume full responsibility for delivery of all goods and services proposed and agree to relieve Fulton County of all responsibility and costs for prosecuting claims.
14. The successful Offeror must assume full responsibility for replacement of all defective or damaged goods and/or performance of contracted services within thirty (30) days notice by the County of such defect, damage or deficiency.

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15. The successful Offeror must assume full responsibility for providing warranty service on all goods, materials, or equipment provided to the County with warranty coverage. Should a vendor be other than the manufacturer, the vendor and not the County is responsible for contacting the manufacturer. The Offeror is solely responsible for arranging for the service to be performed.
  16. The successful Offeror shall be responsible for the proper training and certification of personnel used in the performance of the services proposed.
  17. The successful Offeror shall not assign, transfer, convey, sublet, or otherwise dispose of any contract resulting from the RFP or of any of all of its rights, title or interest therein without prior written consent of the Fulton County Board of Commissioners.
  18. Proposals must contain references which reflect successful completion of contracts for the types of goods, materials, equipment, or services for which the vendor is submitting a proposal to the County. In instances where that does not apply, the proposal must contain a statement and supporting documentation demonstrating such expertise, knowledge, or experience to establish the vendor submitting the proposal as capable of meeting the demands of the proposal should an award be made to them.
  19. Offerors submitting proposals may be required to furnish evidence that they maintain permanent places of business of a type and nature compatible with their proposal, and are in all respects competent and eligible vendors, able to fulfill the terms of the specifications. Fulton County may make such investigations as it deems necessary to determine the ability of the Offeror to perform such work, and reserves the right to reject any proposal if evidence fails to indicate that the proposed vendor is qualified to carry out the obligation of the contract and to complete the work satisfactorily.
  20. By submitting a signed proposal, Offeror certifies that there has been no collusion with any other Offeror. Reasonable grounds for believing Offeror has an interest in more than one proposal will result in rejection of all proposals in which the Offeror has an interest. Any party to collusion may not be considered in future proposals for the same or similar work.
  21. Upon notice of selection, the Offeror submitting the proposal is obligated to perform. Should a successful Offeror refuse to enter into a contract subsequent to an award, a penalty may be assessed and/or the Offeror may be found to be "non-responsible" in the future.
  22. In case of default by the successful Offeror, Fulton County may procure the articles or services from another source and hold the successful Vendor responsible for any resultant excess cost.
  23. Successful Offerors contract directly with the County and are the party or parties obligated to perform. Contracts may not be assigned and any failure to perform the Contract in accordance with the specifications will constitute a breach of contract and may result in an Offeror being found to be "non-responsible" in the future.

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24. Invoice(s) must list each item separately and must show Fulton County's purchase order number as well as the proper department and address to whom the service or product was provided.
  25. Fulton County reserves the right to accept or reject any or all proposals, or any part thereof, and to waive any technicalities. Fulton County reserves the right to award a contract based on this RFP and the proposal(s) received (in whole or in part) to one or several Vendors.
  26. Awards will not necessarily be based on cost alone. Other factors, as detailed in the RFP, will be considered in determining what proposal will be deemed to best meet the needs of Fulton County.
  27. All proposals and bids submitted to Fulton County are subject to the Georgia "Open Records Act", Official Code of Georgia, Annotated (O.C.G.A.) § 50-18-70 et seq.
  28. All proposals and bids submitted to Fulton County involving Utility Contracting are subject to the Georgia law governing licensing of Utility Contractors, O.C.G.A. §43-14-8.2(h). The Utility Contractor License number of the person who will perform the utility work shall be written on the face of the bid envelope.
  29. Prior to beginning any work, the successful Offeror shall furnish to Fulton County (for the contracting firm and for any subcontractors) a certificate from an insurance company showing issuance of Workers' compensation coverage for the State of Georgia or a certificated from the Georgia Workers' Compensation Board showing proof of ability to pay compensation directly.
  30. It is the policy of Fulton County that the evaluation and award process for County contracts shall be free from both actual and perceived impropriety, and that contacts between potential vendors and County officials, elected officials and staff regarding pending awards of County contracts shall be prohibited.
    - A. No person, firm, or business entity, however situated or composed, obtaining a copy of or responding to this solicitation, shall initiate or continue any verbal or written communication regarding this solicitation with any County officer, elected official, employee, or designated County representative, between the date of the issuance of this solicitation and the date of the County Manager's recommendation to the Board of Commissioners for award of the subject contract, except as may otherwise be specifically authorized and permitted by the terms and conditions of this solicitation.
    - B. All verbal and written communications initiated by such person, firm, or entity regarding this solicitation, if same are authorized and permitted by the terms and conditions of this solicitation, shall be directed to the Purchasing Agent.
    - C. Any violation of this prohibition of the initiation or continuation of verbal or written communications with County officers, elected officials, employees, or designated County representatives shall result in a written finding by

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the Purchasing Agent that the submitted bid or proposal of the person, firm, or entity in violation is “non-responsive”, and same shall not be considered for award.

31. Any Offeror intending to respond to this solicitation as a Joint Venture must submit an executed Joint Venture Agreement with this offer. This agreement must designate those persons or entities authorized to execute documents or otherwise bind the Joint Venture in all transactions with Fulton County, or be accompanied by a document, binding upon the Joint Venture and its constituent members, making such designation. Offers from Joint Ventures that do not include these documents will be rejected as being “non-responsive”.
32. Any Offeror intending to respond to this solicitation must complete all of the Procurement Affidavit Forms provided in Section 5. Proposals that do not include these completed documents will be rejected as being “non-responsive”.

## **SECTION 3 PROPOSAL REQUIREMENTS**

### **3.1 SUBMISSION REQUIREMENTS**

#### **3.1.1 Proposal Submission Date and Submittal Format**

All Proposals, including all attachments, must be received by the County in a sealed package no later than **November 16, 2005 at 11:00 A.M.** and must be addressed to:

**REQUEST FOR PROPOSALS 05RFP101205C  
Fulton County Department of Purchasing  
Public Safety Building  
130 Peachtree Street S.E. Suite 1168  
Atlanta GA 30303**

The Proposal shall consist of a Technical Proposal, a Cost Proposal and executed Contract Compliance Exhibits (A-F) and Procurement Affidavits. The Technical Proposal shall include proposer information, technical information, business-related information, and any Technical Proposal forms requested. The Cost Proposal shall include the Cost Proposal Forms and any information describing the basis for pricing and must be separately, sealed, marked and packaged.

The required content of the Technical Proposal and Price Proposal is further specified in this section of the RFP. The Proposal must be signed and acknowledged by the Proposer, including certain information to be provided under oath as required under applicable law, in accordance with the instructions herein and the various proposal forms.

**THE TECHNICAL PROPOSAL, THE COST PROPOSAL AND CONTRACT COMPLIANCE EXHIBITS SHALL BE SUBMITTED IN SEPARATE, SEALED ENVELOPES OR PACKAGES. THE INCLUSION OF ANY COST INFORMATION IN THE TECHNICAL PROPOSAL MAY RESULT IN SUCH PROPOSAL BEING REJECTED BY THE COUNTY.**

Each envelope or package shall be clearly marked as follows:

**REQUEST FOR PROPOSALS 05RFP101205  
Organizational Evaluation & Service Delivery Plan of Action  
Technical or Cost Proposal  
Proposer's Name and Address**

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### **3.1.2 Number of Copies**

Proposers shall submit one (1) original and five (5) copies each of the Technical and Cost Proposals. Proposers shall submit one (1) original and two (2) copies of the Contract Compliance Exhibits. All Proposals must be complete with all requested information.

## **3.2 OVERVIEW OF PROPOSAL REQUIREMENTS**

Proposers shall submit Proposals in accordance with the content and format requirements set forth in this RFP. Proposals should be clearly organized and structured in a manner that allows materials included in the document to be located easily.

Each of the instructions set forth in this section must be followed for a Proposal to be deemed responsive to this RFP. In all cases, the County reserves the right to determine, at its sole discretion, whether any aspect of the Proposal meets the requirements set forth in this section. The County reserves the right to reject any Proposal, which in its judgment, does not comply with these Proposal submission requirements.

## **3.3 SCOPE OF WORK**

### **Organizational Evaluation**

- a. Assess/evaluate Departments current organizational structure
- b. Assess/evaluate Departments existing delivery systems
- c. Benchmark its current structure and service delivery system with other local governmental Registration and Election Departments
- d. Identify service gaps
- e. Assist the Department in reevaluating/reaffirming its current vision and mission
- f. Anticipate social, environmental, and economic changes within the community that impact future service delivery
- g. Anticipate changes in federal, state and local law that impact future service delivery
- h. Assist the Department to develop core strategies to address future needs
- i. Assist the Department to develop new goals and objectives to address future needs.

### **Service Delivery Plan of Action**

- a. Work in concert with the Department Management Team to establish a Service Delivery Plan of Action incorporating identified changes and suggestions garnered from the above components outlining the organizational evaluation process

- 
- b. Produce all written materials necessary to facilitate the development of Plan of Action.
  - c. Produce timely written summary reports, updates, and draft documents as needed.
  - d. Produce a written Service Delivery Plan of Action document reflective of the above process.

### **3.4 TECHNICAL PROPOSAL FORMAT AND CONTENT**

The Technical Proposal shall be arranged and include content as described below:

**1. Experience of the firm to include the following:**

- i. Provide a short narrative of the firm and staffs demonstrated ability.
- ii. Provide a minimum of two (2) references of public sector organizations of similar size to Fulton County for which the firm has conducted similar services in the past two years. Include contact name, title, and telephone number, dollar value of contract, and brief description of services.
- iii. Provide at least two references of a public sector organization where core team members have worked together. Include contact name, title, and telephone number, dollar value of contract, and brief description of services.
- iv. Provide current workload of the firm and personnel to be assigned to the project. Include a statement of availability of project manager during the engagement.
- v. Provide the most recent financial statement of the firm.
- vi. Provide a description of past performance on similar projects and experience the consultant or project team has had with similar projects. For each project, include contact person, time your firm can be contacted regarding these projects.

**2. Qualifications of key staff:**

- i. Provide resumes/qualifications of the individuals to be assigned to the project.
- ii. Include a statement of duties expected to be performed by each individual and approximate number of hours by task.

**3. Comprehension of scope of work:**

- i. Provide a summary of the firm's understanding of the work to be performed by task. Include the steps expected to be performed to complete each task.
- ii. Provide a timeline of the work expected to be performed by task, with approximated date to be performed

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**4. Cost Schedule:**

- i. Sealed cost proposals are to be included in a separate sealed envelope/package,
- ii. Cost proposal shall include the hourly rates for each level of individuals, e.g., manager, consultant, analyst.
- iii. Cost shall be based on estimated number of hours, and not to exceed price based on proposers expressed understanding of the scope of work.

**5. Affidavits:**

- i. Signed, certified copies of the Non-Conflict of Interest, Non-Collusion Affidavit of Proposer, and the Non-Collusion Affidavit of Sub-Contractor contained herein.

**3.5 COST PROPOSAL FORMAT AND CONTENT**

Sealed cost proposals are to be included in a separate sealed envelope/package.

The Cost proposal shall include the hourly rates for each level of individuals, e.g., manager, consultant, analyst. Cost shall be based on estimated number of hours, not to exceed price based on proposers' expressed understanding of the scope of work.

***Section 1 - Introduction***

The Proposer shall include an introduction which outlines the contents of the Cost Proposal.

***Section 2 - Completed Price Proposal Forms***

The Proposer is required to complete **all** of the Price Proposal Forms included in Section 3 of the RFP. Section 3 provides a description of the Price Proposal Forms.

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**COST PROPOSAL FORM**  
**(SUBMIT IN SEPARATE SEALED ENVELOPE)**

JOB DESCRIPTION	HOURLY RATE	ESTIMATED NO. OF HOURS	TOTAL FEE

(If additional space is required include on a separate sheet marked as price proposal page 2, etc.)

**TOTAL NOT TO EXCEED PRICE FOR ENTIRE PROJECT: \$** \_\_\_\_\_

**PRICE IN WORDS** \_\_\_\_\_

## SECTION 4 EVALUATION CRITERIA

### 4.1 PROPOSAL EVALUATION – SELECTION CRITERIA

The award of this contract will be made by the Board of Commissioners of Fulton County to the responsible Offeror whose proposal is determined, upon written recommendation by the County Manager, the Purchasing Agent and the Director of Finance, to be in the best interest of the Fulton County. Consideration is made for price, experience, expertise, location, and other evaluation factors set forth in the Request for Proposal. A Selection Committee shall rank the proposals and make recommendation to the Board of Commissioners for award of the contract. Determinations shall be based on the following criteria and relevant weights of importance:

#### A. TECHNICAL

Consideration	Explanation	Weight
Experience	Experience of the people assigned to perform the services outlined in the RFP.	20
Qualifications of Key Staff	Qualifications of the staff proposed to provide the services herein.	20
Understanding/Detail Scope of Work	Scope and quality of services proposed and demonstrated ability of firm to provide all services identified in this RFP.	30
Local Preference	The Offeror will be given the full 10% for having an office in Fulton County, Georgia that performs the majority of work (i.e., prime vendor not subcontractors). 0% will be given otherwise.	10
<b>TOTAL POINTS</b>		<b>80</b>

#### B. COST

Consideration	Explanation	Weight
Fee Proposal	The County will award the most points to the lowest reasonable and responsive cost proposal.	20
<b>TOTAL POINTS</b>		<b>20</b>

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## **SECTION 5 PROPOSAL FORMS**

### **5.1 INTRODUCTION**

To be deemed responsive to this RFP, Proposers must provide the information requested and complete in detail all Proposal Forms. The appropriate individual(s) authorized to commit the Proposer to the Project must sign the Proposal Forms. Proposers should reproduce each Proposal Form, as required, and complete the appropriate portions of the forms provided in this section.

#### **Procurement Affidavits**

Procurement Affidavit Form 1	Certification Regarding Debarment
Procurement Affidavit Form 2	Form A: Non-Collusion Affidavit (Prime) Form B: Sub-Contractor Non-Collusion Affidavit
Procurement Affidavit Form 3	Certificate of Acceptance of Request for Proposal Requirements

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## **5.2 PROCUREMENT AFFIDAVIT FORMS DESCRIPTION**

The following paragraphs present an overview of each Procurement Affidavit Form required.

### **5.2.1 Certification Regarding Debarment**

Proposer shall complete and submit Form 1, which certifies that neither it nor its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from doing business with any government agency.

### **5.2.2 Non-Collusion Affidavit**

The Proposal shall include a copy of Proposal Form 2A, executed by an authorized officer of the corporation. Proposals developed by a joint venture shall be similarly executed by all joint venture participants. Additionally, all sub-contractors shall execute a copy of Proposal Form 2B which shall also be submitted with the proposal.

### **5.2.3 Certificate of Acceptance of Request for Proposal Requirements**

Proposer shall complete and submit Form 3, which certifies that Proposer has read the solicitation including all addenda, exhibits, attachments and appendices.

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## CERTIFICATION REGARDING DEBARMENT

- (1) The Offeror certifies that neither it or its subcontractors is presently debarred, suspended, proposed for debarment, declared ineligible, or otherwise excluded from doing business with any government agency. Any such exclusion may cause prohibition of your firm from participating in any procurement by the Fulton County Government.
- (2) If the Offeror is unable to certify to any of the statements in this certification, such Offeror or subcontractor shall attach an explanation to this bid or proposal.

### INSTRUCTIONS FOR CERTIFICATION

By signing and submitting this certification, the Offeror is providing the certification set out below:

- (1) The certification in this clause is a material representation of fact upon which reliance will be placed. If it is later determined that the prospective vendor knowingly rendered a false certification, the Purchasing Agent may pursue all available remedies, including suspension and/or debarment, for withdrawal of award or termination of a contract.
- (2) The prospective Offeror shall provide immediate written notice to the Purchasing Agent if at anytime the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- (3) Offeror shall be under a continuing duty to immediately inform the Purchasing Agent in writing of any changes, if as a result of such changes, the Offeror certification regarding debarment is affected.

### DEBARMENT ORDINANCE

The following Section 2-322 of Fulton County Code of Laws establishes the procedure for the debarment of contractors.

(a) *Authority to suspend.*

After reasonable notice to the entity involved and reasonable opportunity for that entity to be heard, the Purchasing Agent, after consultation with user department, the County Manager and the County Attorney shall have the authority to suspend an entity for cause from consideration for award of county contracts. As used in this section, the term entity means any business entity, individual, firm, contractor, subcontractor or business corporation, partnership, limited liability corporation, firm, contractor, subcontractor or business structured; provided, further, that any such entity shall also be subject to suspension under this section if any of its constituents, members, subcontractors at any tier of such entity's and the entity, or any constituent or member, knew or should have known of the commission of the act. The suspension shall be for a period not to exceed three (3) years unless cause is based on a felony conviction for an offense related or associated with fraudulent contracting or misappropriation of funds wherein the suspension shall not exceed seven (7) years.

(b) *Causes for Suspension.* The causes for suspension include:

- (1) Conviction for commission of a criminal offense as an incident to obtain or attempting to obtain a public or private contract or subcontract, or in performance of such contract or subcontract;
- (2) Conviction of state or federal statutes of embezzlement, theft, forgery, bribery,

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falsification or destruction of records, receiving stolen property or other offense indicating a lack of business integrity or business honesty which currently, seriously and directly affects responsibility as a county contractor.

- (3) Conviction of state or federal anti-trust statutes arising out of the solicitation and submission of bids and proposals;
- (4) Violation of contract provisions, as set forth below, of a character which is regarded by the Purchasing Agent to be so serious as to justify suspension action:
  - a. Failure to perform in accordance with the specifications within a time limit provided in a county contract;
  - b. A recent record of failure to perform or unsatisfactory performance in accordance with the terms of one or more contracts; provided, that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for suspension;
  - c. Material representation of the composition of the ownership or workforce or business entity certified to the county as a minority business enterprise; or
  - d. Falsification of any documents.
- (5) For violation of the ethical standards set forth in Fulton County Code Chapter 9, Code of Ethics.
- (6) Knowing misrepresentation to the county, of the use which a majority owned contractor intends to make a minority business enterprise (a business entity at least 51 percent of which is owned and controlled by minority persons, as defined in Fulton County Code Chapter 6, Article B, Minority Business Enterprise Affirmative Action Program and certified as such by the county), as a sub-contractor or a joint venture partner, in performing work under contract with the county.

Failure to fully and truthfully provide the information required, may result in the disqualification of your bid/proposal from consideration or termination of the Contract, once awarded. This document must be completed and included as a part of the bid/proposal package along with other required documents.

[SIGNATURES ON NEXT PAGE]

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Under penalty of perjury, I declare that I have examined this certification and all attachments hereto, if applicable, to the best of my knowledge and belief, and all statements contained hereto are true, correct, and complete.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2005

\_\_\_\_\_  
(Legal Name of Offeror) (Date)

\_\_\_\_\_  
(Signature of Authorized Representative) (Date)

\_\_\_\_\_  
(Title)

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STATE OF GEORGIA

COUNTY OF FULTON

**NON-COLLUSION AFFIDAVIT OF BIDDER/OFFEROR**

I, \_\_\_\_\_ certify that pursuant to Fulton County Code Section 2-320 (11), this bid or proposal is made without prior understanding, agreement or connection with any corporation, firm or person submitting a bid for the same work, labor or service to be done or the supplies, materials or equipment to be furnished and is in all respects fair and without collusion or fraud. I understand collusive bidding is a violation of state and federal law and can result in fines, prison sentences and civil damages awards. I agree to abide by all conditions of this bid or proposal and certify that I am authorized to sign this bid or proposal for the bidder.

Affiant further states that pursuant to O.C.G.A. Section 36-91-21 (d) and (e), \_\_\_\_\_ has not, by itself or with others, directly or indirectly, prevented or attempted to prevent competition in such bidding or proposals by any means whatsoever. Affiant further states that (s)he has not prevented or endeavored to prevent anyone from making a bid or offer on the project by any means whatever, nor has Affiant caused or induced another to withdraw a bid or offer for the work.

Affiant further states that the said offer of \_\_\_\_\_ is bona fide, and that no one has gone to any supplier and attempted to get such person or company to furnish the materials to the bidder only, or if furnished to any other bidder, that the material shall be at a higher price.

\_\_\_\_\_  
(COMPANY NAME)

\_\_\_\_\_  
(PRESIDENT/VICE PRESIDENT)

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
(SECRETARY/ASSISTANT SECRETARY)

(Affix corporate seal here, if a corporation)

Notary Public: \_\_\_\_\_

County: \_\_\_\_\_

Commission Expires: \_\_\_\_\_

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**NOTE:**

**IF THE OFFEROR IS A PARTNERSHIP, ALL OF THE PARTNERS AND ANY OFFICER, AGENT, OR OTHER PERSON WHO MAY HAVE REPRESENTED OR ACTED FOR THEM IN BIDDING FOR OR PROCURING THE CONTRACT SHALL ALSO MAKE THIS OATH.**

**IF THE OFFEROR IS A CORPORATION, ALL OFFICERS, AGENTS, OR OTHER PERSONS WHO MAY HAVE ACTED FOR OR REPRESENTED THE CORPORATION IN BIDDING FOR OR PROCURING THE CONTRACT SHALL MAKE THE OATH.**

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STATE OF GEORGIA

COUNTY OF FULTON

**NON-COLLUSION AFFIDAVIT OF SUBCONTRACTOR**

I, \_\_\_\_\_ certify that pursuant to Fulton County Code Section 2-320 (11), this bid or proposal is made without prior understanding, agreement or connection with any corporation, firm or person submitting a bid for the same work, labor or service to be done or the supplies, materials or equipment to be furnished and is in all respects fair and without collusion or fraud. I understand collusive bidding is a violation of state and federal law and can result in fines, prison sentences and civil damages awards. I agree to abide by all conditions of this bid or proposal and certify that I am authorized to sign this bid or proposal for the bidder.

Affiant further states that pursuant to O.C.G.A. Section 36-91-21 (d) and (e), \_\_\_\_\_ has not, by itself or with others, directly or indirectly, prevented or attempted to prevent competition in such bidding or proposals by any means whatsoever. Affiant further states that (s)he has not prevented or endeavored to prevent anyone from making a bid or offer on the project by any means whatever, nor has Affiant caused or induced another to withdraw a bid or offer for the work.

Affiant further states that the said offer of \_\_\_\_\_ is bona fide, and that no one has gone to any supplier and attempted to get such person or company to furnish the materials to the bidder only, or if furnished to any other bidder, that the material shall be at a higher price.

\_\_\_\_\_  
(COMPANY NAME)

\_\_\_\_\_  
(PRESIDENT/VICE PRESIDENT)

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
(SECRETARY/ASSISTANT SECRETARY)

(Affix corporate seal here, if a corporation)

Notary Public: \_\_\_\_\_

County: \_\_\_\_\_

Commission Expires: \_\_\_\_\_

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**NOTE:**

**IF THE OFFEROR IS A PARTNERSHIP, ALL OF THE PARTNERS AND ANY OFFICER, AGENT, OR OTHER PERSON WHO MAY HAVE REPRESENTED OR ACTED FOR THEM IN BIDDING FOR OR PROCURING THE CONTRACT SHALL ALSO MAKE THIS OATH.**

**IF THE OFFEROR IS A CORPORATION, ALL OFFICERS, AGENTS, OR OTHER PERSONS WHO MAY HAVE ACTED FOR OR REPRESENTED THE CORPORATION IN BIDDING FOR OR PROCURING THE CONTRACT SHALL MAKE THE OATH.**

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**CERTIFICATE OF ACCEPTANCE OF REQUEST  
FOR PROPOSAL REQUIREMENTS**

This is to certify that on this day, offeror acknowledges that he/she has read this solicitation document, pages #\_\_\_\_\_ to #\_\_\_\_\_ inclusive, including any addenda # \_\_\_\_\_ to #\_\_\_\_\_ exhibit(s) #\_\_\_\_\_ to #\_\_\_\_\_, attachment(s) # \_\_\_\_\_, and/or appendices #\_\_\_\_\_ to #,\_\_\_\_\_in its entirety, and agrees that no pages or parts of the document have been omitted, that he/she understands, accepts and agrees to fully comply with the requirements therein, and that the undersigned is authorized by the offeror to submit the proposal herein and to legally obligate the offeror thereto.

Company: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

**(Affix Corporate Seal)**

## SECTION 6

### CONTRACT COMPLIANCE REQUIREMENTS

#### 6.1 NON-DISCRIMINATION IN CONTRACTING AND PROCUREMENTS

It is the policy of Fulton County Government that discrimination against businesses by reason of the race, color, gender or national origin of the ownership of any such business is prohibited. Furthermore, it is the policy of the Board of Commissioners ("Board") that Fulton County and all vendors and contractors doing business with Fulton County shall provide to all businesses the opportunity to participate in contracting and procurement paid, in whole or in part, with monetary appropriations of the Board. Similarly, it is the policy of the Board that the contracting and procurement practices of Fulton County should not implicate Fulton County as either an active or passive participant in the discriminatory practices engaged in by private contractors or vendors seeking to obtain contracts with Fulton County.

**Equal Business Opportunity Plan (EBO Plan):** In addition to the proposal submission requirements, each vendor must submit an Equal Business Opportunity Plan (EBO Plan) with their bid/proposal. The EBO Plan is designed to enhance the utilization of a particular racial, gender or ethnic group by a bidder/proposer, contractor, or vendor or by Fulton County. The respondent must outline a plan of action to encourage and achieve diversity and equality in the available procurement and contracting opportunities with *this solicitation*.

The EBO Plan must identify and include:

1. Potential opportunities within the scope of work of *this solicitation* that will allow for participation of racial, gender or ethnic groups.
2. Efforts that will be made by the bidder/proposer to encourage and solicit minority and female business utilization in *this solicitation*.

Fulton County encourages joint ventures, teaming, partnering and mentor-protégé relationships with minority and female businesses in an effort to achieve contracting and procurement diversity.

**Prompt Payment:** The prime contractor must certify in writing and must document on the Exhibit G Form (Prime Contractor/Subcontractor Utilization Report) that all subcontractors, sub-consultants and suppliers have been promptly paid for work and materials, (less any retainage by the prime contractor prior to receipt of any further progress payments). In the event the prime contractor is unable to pay subcontractors, sub-consultants or suppliers until it has received a progress payment from Fulton County, the prime contractor shall pay all subcontractors, sub-consultants or suppliers funds due from said progress payment within forty-eight (48) hours of receipt of

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payment from Fulton County. In no event shall a subcontractor, sub-consultant or supplier be paid later than fifteen (15) days as provided for by state law.

## **6.2 REQUIRED FORMS AND EBO PLAN**

In order to be compliant with the intent and provisions of the Fulton County Non-Discrimination in Purchasing and Contracting Ordinance (99-0960), bidders/proposers **must** submit the following completed documents. Failure to provide this information **shall** result in the proposal being deemed non-responsive.

- **Exhibit A** – Promise of Non-Discrimination
- **Exhibit B** – Employment Report
- **Exhibit C** – Schedule of Intended Subcontractor Utilization
- **Exhibit D** – Letter of Intent to Perform as a Subcontractor or Provide Materials or Services
- **Exhibit E** – Declaration Regarding Subcontractors Practices
- **Exhibit F** – Joint Venture Disclosure Affidavit
- **Equal Business Opportunity Plan (EBO Plan)** – This document is not a form. It is a statement created by the bidder/proposer on its company letter head addressing the EBO Plan requirements.

All Contract Compliance documents (Exhibits A – F and EBO Plan) are to be placed in a **separate sealed envelope** clearly marked “Contract Compliance”. The EBO Plan must be submitted on company letterhead. These documents are considered part of and should be submitted with the Technical Proposal.

The following document must be completed as instructed if awarded the project:

- **Exhibit G** – Prime Contractor’s Subcontractor Utilization Report

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## EXHIBIT A – PROMISE OF NON-DISCRIMINATION

"Know all persons by these presents, that I/We (\_\_\_\_\_),  
Name

_____ Title	_____ Firm Name
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Hereinafter "Company", in consideration of the privilege to bid on or obtain contracts funded, in whole or in part, by Fulton County, hereby consent, covenant and agree as follows:

- 1) No person shall be excluded from participation in, denied the benefit of, or otherwise discriminated against on the basis of race, color, national origin or gender in connection with any bid submitted to Fulton County for the performance of any resulting there from,
- 2) That it is and shall be the policy of this Company to provide equal opportunity to all businesses seeking to contract or otherwise interested in contracting with this Company without regard to the race, color, gender or national origin of the ownership of this business,
- 3) That the promises of non-discrimination as made and set forth herein shall be continuing in nature and shall remain in full force and effect without interruption,
- 4) That the promise of non-discrimination as made and set forth herein shall be made a part of, and incorporated by reference into, any contract or portion thereof which this Company may hereafter obtain,
- 5) That the failure of this Company to satisfactorily discharge any of the promises of non-discrimination as made and set forth herein shall constitute a material breach of contract entitling the Board to declare the contract in default and to exercise any and all applicable rights and remedies, including but not limited to cancellation of the contract, termination of the contract, suspension and debarment from future contracting opportunities, and withholding and/or forfeiture of compensation due and owing on a contract; and
- 6) That the bidder shall provide such information as may be required by the Director of Contract Compliance pursuant to Section 4.4 of the Fulton County Non-Discrimination in Purchasing and Contracting Ordinance.

**SIGNATURE:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

\_\_\_\_\_  
**TELEPHONE NUMBER:** \_\_\_\_\_

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## EXHIBIT B – EMPLOYMENT REPORT

The demographic employment make-up for the bidder/proposer **must** be identified and submitted with this bid/proposal. In addition, if subcontractors will be utilized by the bidder/proposer to complete this project, then the demographic employment make-up of the subcontractor(s) must be identified and submitted with this bid.

<b>EMPLOYEES</b>
------------------

CATEGORY	NATIVE AMERICAN		AFRICAN AMERICAN		ASIAN AMERICAN		HISPANIC AMERICAN		CAUCASIAN AMERICAN		OTHER	
	M	F	M	F	M	F	M	F	M	F	M	F
Male/Female												
Mgmt/Official												
Professional												
Supervisors												
Office/ Clerical												
Craftsmen												
Laborers												
Other (specify)												
TOTALS												

FIRM'S NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_

This completed form is for (Check one) \_\_\_\_Bidder/Proposer \_\_\_\_Subcontractor

Submitted by: \_\_\_\_\_ Date Completed: \_\_\_\_\_

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## EXHIBIT C - SCHEDULE OF INTENDED SUBCONTRACTOR UTILIZATION

If the bidder/proposer intends to subcontract any portion of this scope of work/service(s), this form **must be** completed and **submitted with the bid/proposal**. All prime bidders/proposers **must** include Letter(s) of Intent (Exhibit D) in the bid document for all subcontractors who will be utilized under the scope of work/services.

**Prime Bidder/Proposer:** \_\_\_\_\_

**ITB/RFP Number:** \_\_\_\_\_

**Project Name or Description of Work/Service(s):** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

1. My firm, as Prime Bidder/Proposer on this scope of work/service(s) is \_\_\_\_\_ is not \_\_\_\_\_ a minority or female owned and controlled business enterprise. (Please indicate below the portion of work, including, percentage of bid/proposal amount that your firm will carry out directly):

\_\_\_\_\_  
\_\_\_\_\_

2. If the Prime Bidder/Proposer is a Joint Venture, please complete Exhibit F: Joint Venture Disclosure Affidavit and attach a copy of the executed Joint Venture Agreement.

3. Sub-Contractors (including suppliers) to be utilized in the performance of this scope of work/service(s), if awarded, are:

SUBCONTRACTOR NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PHONE: \_\_\_\_\_

CONTACT PERSON: \_\_\_\_\_

ETHNIC GROUP\*: \_\_\_\_\_ COUNTY CERTIFIED\*\* \_\_\_\_\_

WORK TO BE PERFORMED: \_\_\_\_\_

DOLLAR VALUE OF WORK: \$ \_\_\_\_\_ PERCENTAGE VALUE: \_\_\_\_\_ %

**\*Ethnic Groups: African American (AABE); Asian American (ABE); Hispanic American (HBE); Native American (NABE); White Female American (WFBE); \*\*If yes, please attach copy of recent certification.**

---

SUBCONTRATOR NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
PHONE: \_\_\_\_\_  
CONTACT PERSON: \_\_\_\_\_  
ETHNIC GROUP\*: \_\_\_\_\_ COUNTY CERTIFIED\*\* \_\_\_\_\_  
WORK TO BE PERFORMED: \_\_\_\_\_  
DOLLAR VALUE OF WORK: \$ \_\_\_\_\_ PERCENTAGE VALUE: \_\_\_\_\_ %

---

SUBCONTRATOR NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
PHONE: \_\_\_\_\_  
CONTACT PERSON: \_\_\_\_\_  
ETHNIC GROUP\*: \_\_\_\_\_ COUNTY CERTIFIED\*\* \_\_\_\_\_  
WORK TO BE PERFORMED: \_\_\_\_\_  
DOLLAR VALUE OF WORK: \$ \_\_\_\_\_ PERCENTAGE VALUE: \_\_\_\_\_ %

---

SUBCONTRATOR NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
PHONE: \_\_\_\_\_  
CONTACT PERSON: \_\_\_\_\_  
ETHNIC GROUP\*: \_\_\_\_\_ COUNTY CERTIFIED\*\* \_\_\_\_\_  
WORK TO BE PERFORMED: \_\_\_\_\_  
DOLLAR VALUE OF WORK: \$ \_\_\_\_\_ PERCENTAGE VALUE: \_\_\_\_\_ %

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SUBCONTRATOR NAME: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
PHONE: \_\_\_\_\_  
CONTACT PERSON: \_\_\_\_\_  
ETHNIC GROUP\*: \_\_\_\_\_ COUNTY CERTIFIED\*\* \_\_\_\_\_  
WORK TO BE PERFORMED: \_\_\_\_\_  
DOLLAR VALUE OF WORK: \$ \_\_\_\_\_ PERCENTAGE VALUE: \_\_\_\_\_ %

**\*Ethnic Groups: African American (AABE); Asian American (ABE); Hispanic American (HBE); Native American (NABE); White Female American (WFBE); \*\*If yes, please attach copy of recent certification.**

---

**Total Dollar Value of Subcontractor Agreements: (\$)**

**Total Percentage Value: (%)**

**CERTIFICATION:** The undersigned certifies that he/she has read, understands and agrees to be bound by the Bid/Proposer provisions, including the accompanying Exhibits and other terms and conditions regarding sub-contractor utilization. The undersigned further certifies that he/she is legally authorized by the Bidder/Proposer to make the statement and representation in this Exhibit and that said statements and representations are true and correct to the best of his/her knowledge and belief. The undersigned understands and agrees that if any of the statements and representations are made by the Bidder/Proposer knowing them to be false, or if there is a failure of the intentions, objectives and commitments set forth herein without prior approval of the County, then in any such event the Contractor's acts or failure to act, as the case may be, shall constitute a material breach of the contract, entitling the County to terminate the Contract for default. The right to so terminate shall be in addition to, and in lieu of, any other rights and remedies the County may have for other defaults under the contract.

**Signature:**\_\_\_\_\_ **Title:**\_\_\_\_\_

**Firm or Corporate Name:**\_\_\_\_\_

**Address:**\_\_\_\_\_

**Telephone:** (     ) \_\_\_\_\_

**Fax Number:** (     ) \_\_\_\_\_

**Email Address:**\_\_\_\_\_

---

## EXHIBIT D

### LETTER OF INTENT TO PERFORM AS A SUBCONTRACTOR OR PROVIDE MATERIALS OR SERVICES

This form **must** be completed by **ALL** known subcontractor and submitted with the bid/proposal. The Prime Contractor **must** submit Letters of Intent for **ALL** known subcontractors at time of bid submission.

To: \_\_\_\_\_  
(Name of Prime Contractor Firm)

From: \_\_\_\_\_  
(Name of Subcontractor Firm)

ITB/RFP Number: \_\_\_\_\_

Project Name: \_\_\_\_\_

The undersigned is prepared to perform the following described work or provide materials or services in connection with the above project (specify in detail particular work items, materials, or services to be performed or provided):

Description of Work	Project Commence Date	Project Completion Date	Estimated Dollar Amount

\_\_\_\_\_  
(Prime Bidder)

Signature \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

\_\_\_\_\_  
(Subcontractor)

Signature \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

---

## EXHIBIT E - DECLARATION REGARDING SUBCONTRACTING PRACTICES

If the bidder/proposer **does not intend to subcontract** any portion of the scope of work services(s), this form **must be** completed and submitted with the bid/proposal.

\_\_\_\_\_ hereby declares that it is my/our intent to  
(Bidder)

perform 100% of the work required for \_\_\_\_\_  
(ITB/RFP Number)

\_\_\_\_\_  
(Description of Work)

In making this declaration, the bidder/proposer states the following:

1. That the bidder/proposer does not customarily subcontract elements of this type project, and normally performs and has the capability to perform and will perform **all elements** of the work on this project with his/her own current work forces;
2. If it should become necessary to subcontract some portion of the work at a later date, the bidder/proposer will comply with all requirements of the County's Non-Discrimination Ordinance in providing equal opportunities to all firms to subcontract the work. The determination to subcontract some portion of the work at a later date shall be made in good faith and the County reserves the right to require additional information to substantiate a decision made by the bidder/proposer to subcontract work following the award of the contract. Nothing contained in this provision shall be employed to circumvent the spirit and intent of the County's Non-Discrimination Ordinances;
3. The bidder will provide, upon request, information sufficient for the County to verify Item Number one.

### AUTHORIZED COMPANY REPRESENTATIVE

Name: \_\_\_\_\_ Title: \_\_\_\_\_ Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Firm: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

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## EXHIBIT F - JOINT VENTURE DISCLOSURE AFFIDAVIT

ITB/RFP No. \_\_\_\_\_

Project Name \_\_\_\_\_

This form must be completed and submitted with the bid/proposal if a joint venture approach is to be undertaken.

In order to evaluate the extent of small, minority and female business involvement being proposed by a Bidder/Proposer, certain relevant information must be provided prior to contract award. The information requested below is to clearly identify and explain the extent of small business participation in the proposed joint venture. All items must be properly addressed before the business entity can be evaluated.

**1. Firms:**

1) Name of Business: \_\_\_\_\_

Street Address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Nature of Business: \_\_\_\_\_

2) Name of Business: \_\_\_\_\_

Street Address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Nature of Business: \_\_\_\_\_

3) Name of Business: \_\_\_\_\_

Street Address: \_\_\_\_\_

Telephone No.: \_\_\_\_\_

Nature of Business: \_\_\_\_\_

NAME OF JOINT VENTURE (If applicable): \_\_\_\_\_

ADDRESS: \_\_\_\_\_

PRINCIPAL OFFICE: \_\_\_\_\_

OFFICE PHONE: \_\_\_\_\_

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**Note:** Attach additional sheets as required

1. Describe the capital contributions by each joint venturer and accounting thereof.
2. Describe the financial controls of the joint venture, e.g., will a separate cost center be established? Which venturer will be responsible for keeping the books? How will the expense therefore be reimbursed? What is the authority of each joint venture to commit or obligate the order?
3. Describe any ownership, options for ownership, or loans between the joint ventures. Identify terms thereof.
4. Describe the estimated contract cash flow for each joint venturer.
5. To what extent and by whom will the on-site work be supervised?
6. To what extent and by whom will the administrative office be supervised?
7. Which joint venturer will be responsible for material purchases including the estimated cost thereof? How will the purchase be financed?
8. Which joint venturer will provide equipment? What is the estimated cost thereof? How will the equipment be financed?
9. Describe the experience and business qualifications of each joint venturer.
10. Submit a copy of all joint venture agreements and evidence of authority to do business in the State of Georgia as well as locally, to include all necessary business licenses.
11. Percent of Minority/Female Business Enterprises ownership by each joint venture in terms of profit and loss sharing: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
12. The authority of each joint venturer to commit or obligate the other: \_\_\_\_\_  
\_\_\_\_\_
13. Number of personnel to be involved in project, their crafts and positions and whether they are employees of the Minority/Female Business Enterprises enterprise, the majority firm or the joint venture: \_\_\_\_\_  
\_\_\_\_\_

14. Identification of control and participation in venture; list those individuals who are responsible for day-to-day management and policy decision-maker, including, but not limited to, those with prime responsibility for areas designated below; (use additional sheets if necessary)

<u>Name</u>	<u>Race</u>	<u>Sex</u>	<u>Financial Decisions</u>	<u>Supervision Field Operation</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

In connection with any work that these firms, as a joint venture, might be authorized to perform in connection with above captioned contract, we each do hereby authorize representatives of the Fulton County Department of Contract Compliance, Departments of Purchasing and Finance, under the direction of the County Manager's Office, to examine, from time to time, the books, records and files to the extent that such relate to this County project.

**WE DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING DOCUMENT ARE TRUE AND CORRECT, AND THAT WE ARE AUTHORIZED, ON BEHALF OF THE ABOVE FIRMS, TO MAKE THIS AFFIDAVIT AND GRANT THE ABOVE PRIVILEGE.**

FOR \_\_\_\_\_  
(Company)

Date: \_\_\_\_\_  
(Signature of Affiant)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Company)

Date: \_\_\_\_\_  
(Signature of Affiant)

\_\_\_\_\_  
(Printed Name)

State of \_\_\_\_\_:

County of \_\_\_\_\_:

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, before me, appeared \_\_\_\_\_, the undersigned known to me to be the person described in the foregoing Affidavit and acknowledge that he (she) executed the same in the capacity therein stated and for the purpose therein contained.

## EXHIBIT – G PRIME CONTRACTOR/SUB-CONTRACTOR UTILIZATION REPORT

This report **must** be submitted by the **tenth day** of each month, along with a copy of your monthly invoice (schedule of values/payment application) to Contract Compliance. Failure to comply **shall** result in the County commencing proceedings to impose sanctions to the prime contractor, in addition to pursuing any other available legal remedy. Sanctions may include the suspending of any payment or part thereof, termination or cancellation of the contract, and the denial of participation in any future contracts awarded by Fulton County.

<b>REPORTING PERIOD</b>		<b>PROJECT NAME:</b>	
<b>FROM:</b>		<b>PROJECT NUMBER:</b>	
<b>TO:</b>		<b>PROJECT LOCATION:</b>	

PRIME CONTRACTOR		Contract Award Date	Contract Award Amount	Change Order Amount	
Name:					
Address:					
Telephone #:					

AMOUNT OF REQUISITION THIS PERIOD: \$ \_\_\_\_\_  
TOTAL AMOUNT REQUISITION TO DATE: \$ \_\_\_\_\_

**SUBCONTRACTOR UTILIZATION** (add additional rows as necessary)

Name of Sub-Contractor	Description of Work	Contract Amount	Amount Paid To Date	Amount Requisition This Period	Start Date
TOTALS					

Executed By: \_\_\_\_\_

(Signature)

(Printed

Name)

Nortary: \_\_\_\_\_

Date:

My Commission Expires: \_\_\_\_\_

Should you have questions regarding any of the documents contained in Section 6, please feel free to contact the Office of Contract Compliance at (404) 763-6300, for further assistance.

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## SECTION 7

# INSURANCE AND RISK MANAGEMENT PROVISIONS

### Insurance and Risk Management Provisions

It is Fulton County Government's practice to obtain Certificates of Insurance from our Contractors and Vendors. Insurance must be written by a licensed agent in a company licensed to write insurance in the State of Georgia. Respondents shall submit with the bid/proposal evidence of insurability satisfactory to Fulton County Government as to form and content. Either of the following forms of evidence is acceptable:

- A letter from an insurance carrier stating that upon your firm/company being the successful Bidder/Respondent that a Certificate of Insurance shall be issued in compliance with the Insurance and Risk Management Provisions outlined below.
- A Certificate of Insurance complying with the Insurance and Risk Management Provisions outlined below (Request for Bid/Proposal number and Project Description must appear on the Certificate of Insurance).

Upon award, the Contractor/Vendor must maintain at their expense, insurance with policy limits equal to or greater than the limits described below. Any and all Insurance Coverage(s) and Bonds required under the terms and conditions of the contract shall be maintained during the entire length of the contract, including any extensions or renewals thereto, and until all work has been completed to the satisfaction of Fulton County Government.

Accordingly the Respondent shall provide a certificate evidencing the following:

**1. WORKERS COMPENSATION – STATUTORY (In compliance with the Georgia Workers Compensation Acts and any other State or Federal Acts or Provisions in which jurisdiction may be granted)**

EMPLOYER'S LIABILITY	BY ACCIDENT - EACH ACCIDENT	-	\$500,000.
INSURANCE	BY DISEASE - POLICY LIMIT	-	\$500,000.
(Aggregate)	BY DISEASE - EACH EMPLOYEE	-	\$500,000.

**2. COMMERCIAL GENERAL LIABILITY INSURANCE (Including contractual Liability Insurance)**

Bodily Injury and Property Damage Liability	Each Occurrence	-	\$1,000,000
(Other than Products/Completed Operations)	General Aggregate	-	\$2,000,000
Products\Completed Operation	Aggregate Limit	-	\$1,000,000
Personal and Advertising Injury	Limits	-	\$1,000,000
Fire Damage	Limits	-	\$100,000

**3. BUSINESS AUTOMOBILE LIABILITY INSURANCE**

<b>Combined Single Limits</b>	Each Occurrence	-	\$1,000,000
(Including operation of non-owned, owned, and hired automobiles).			

**4. ELECTRONIC DATA PROCESSING LIABILITY**

(Required if computer contractor)	Limits	-	\$1,000,000
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5. **UMBRELLA LIABILITY**

(In excess of above noted coverage's)                      Each Occurrence                      -                      \$2,000,000

6. **PROFESSIONAL LIABILITY**

Each Occurrence                      -                      \$1,000,000  
(Required if respondent providing quotation for professional services).

7. **FIDELITY BOND**

(Employee Dishonesty)                      Each Occurrence                      -                      \$ 100,000

Certificates shall state that the policy or policies shall not expire, be cancelled or altered without at least thirty (30) days prior written notice to Fulton County Government. Policies and Certificates of Insurance are to list Fulton County Government as an Additional Insured (except for Workers' Compensation) and shall conform to all terms and conditions (including coverage of the indemnification and hold harmless agreement) contained in the Insurance and Risk Management Provisions.

If Fulton County Government shall so request, the Offeror, Contractor or Vendor will furnish the County for its inspection and approval such policies of insurance with all endorsements, or confirmed specimens thereof certified by the insurance company to be true and correct copies.

Such certificates and notices shall be sent to:

Fulton County Government – Purchasing Department  
130 Peachtree Street, S.W.  
Suite 1168  
Atlanta, Georgia 30303-3459

The Contractor/Vendor shall insure that the Request for Bid/Proposal number and Project Description appears on the Certificate of Insurance.

It is understood that **Insurance in no way Limits the Liability of the Contractor/Vendor.**

INDEMNIFICATION AND HOLD HARMLESS AGREEMENT

**Contractor/Vendor hereby agrees to release, indemnify, defend and hold harmless the County, it's Commissioners, officers, employees, subcontractors, successors, assigns and agents, from and against any and all losses (including death), claims, damages, liabilities, costs and expenses (including but not limited to all actions, proceedings, or investigations in respect thereof and any costs of judgments, settlements, court costs, attorney's fees or expenses, regardless of the outcome of any such action, proceeding, or investigation), caused by, relating to, based upon or arising out of any act or omission by contractor, it's directors, officers, employees, subcontractors, successors, assigns or agents, or otherwise in connection with it's acceptance, or the performance, or nonperformance, of it's obligations under this agreements.**

THE OFFEROR ACKNOWLEDGES HAVING READ, UNDERSTANDING, AND AGREES TO COMPLY WITH THE ABOVE STATEMENTS, AND IS AUTHORIZED TO SIGN CONTRACTS ON BEHALF OF THE RESPONDING COMPANY.

COMPANY: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_

NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_ DATE: \_\_\_\_\_

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**SECTION 8**

**SAMPLE CONTRACT - PROFESSIONAL SERVICES AGREEMENT**

**RFP # 05RFP101205C - Organizational Evaluation & Service Delivery Plan of Action**

Article 1.	<b><u>CONTRACT DOCUMENTS</u></b>
Article 2.	<b><u>SEVERABILITY</u></b>
Article 3.	<b><u>DESCRIPTION OF PROJECT</u></b>
Article 4.	<b><u>SCOPE OF SERVICES</u></b>
Article 5.	<b><u>DELIVERABLES</u></b>
Article 6.	<b><u>SERVICES PROVIDED BY COUNTY</u></b>
Article 7.	<b><u>MODIFICATIONS/CHANGE ORDERS</u></b>
Article 8.	<b><u>SCHEDULE OF WORK</u></b>
Article 9.	<b><u>CONTRACT TERM</u></b>
Article 10.	<b><u>COMPENSATION AND PAYMENT FOR CONSULTANT SERVICES</u></b>
Article 11.	<b><u>PERSONNEL AND EQUIPMENT</u></b>
Article 12.	<b><u>SUSPENSION OF WORK</u></b>
Article 13.	<b><u>DISPUTES</u></b>
Article 14.	<b><u>TERMINATION OF AGREEMENT FOR CAUSE</u></b>
Article 15.	<b><u>TERMINATION FOR CONVENIENCE OF COUNTY</u></b>
Article 16.	<b><u>WAIVER OF BREACH</u></b>
Article 17.	<b><u>INDEPENDENT CONTRACTOR</u></b>
Article 18.	<b><u>RESPONSIBILITY OF CONSULTANT</u></b>
Article 19.	<b><u>COOPERATION WITH OTHER CONSULTANTS</u></b>
Article 20.	<b><u>ACCURACY OF WORK</u></b>
Article 21.	<b><u>REVIEW OF WORK</u></b>
Article 22.	<b><u>INDEMNIFICATION</u></b>
Article 23.	<b><u>CONFIDENTIALITY</u></b>
Article 24.	<b><u>OWNERSHIP OF INTELLECTUAL PROPERTY AND INFORMATION:</u></b>
Article 25.	<b><u>COVENANT AGAINST CONTINGENT FEES</u></b>
Article 26.	<b><u>INSURANCE</u></b>
Article 27.	<b><u>PROHIBITED INTEREST</u></b>
Article 28.	<b><u>SUBCONTRACTING</u></b>
Article 29.	<b><u>ASSIGNABILITY</u></b>
Article 30.	<b><u>ANTI-KICKBACK CLAUSE</u></b>
Article 31.	<b><u>AUDITS AND INSPECTORS</u></b>
Article 32.	<b><u>ACCOUNTING SYSTEM</u></b>
Article 33.	<b><u>VERBAL AGREEMENT</u></b>
Article 34.	<b><u>NOTICES</u></b>
Article 35.	<b><u>JURISDICTION</u></b>
Article 36.	<b><u>EQUAL EMPLOYMENT OPPORTUNITY</u></b>
Article 37.	<b><u>FORCE MAJEURE</u></b>
Article 38.	<b><u>OPEN RECORDS ACT</u></b>
Article 39.	<b><u>CONSULTANT'S COMPLIANCE WITH ALL ASSURANCES OR PROMISES MADE IN RESPONSE TO PROCUREMENT:</u></b>
Exhibits	

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## SAMPLE PROFESSIONAL AGREEMENT

This Agreement, made and entered into as of the \_\_\_\_\_ day of \_\_\_\_\_, 2005 by and between **FULTON COUNTY, GEORGIA** a political subdivision of the State of Georgia, hereinafter referred to as "COUNTY", and \_\_\_\_\_, to provide professional driver training services in Georgia, hereinafter referred to as "CONSULTANT":

### WITNESSETH

WHEREAS, COUNTY through its Finance Department, Risk Management Division (hereinafter referred to as the "DEPARTMENT") desires to retain a qualified and experienced consultant to perform certain services regarding Driver Training Program for Fulton County employees/drivers (hereinafter, referred to as the "Project").

WHEREAS, CONSULTANT has represented to COUNTY that it is experienced and has qualified and local staff available to commit to the Project and COUNTY has relied upon such representations.

NOW THEREFORE, for and in consideration of the mutual covenants contained herein, and for other good and valuable consideration, COUNTY and CONSULTANT agree as follows:

ARTICLE 1. **CONTRACT DOCUMENTS:** COUNTY hereby engages CONSULTANT, and CONSULTANT hereby agrees to perform the services hereinafter set forth. This Agreement, together with the COUNTY'S request for proposal, acknowledgements, the Agreement, general conditions [**where applicable**], special conditions [**where applicable**], specifications, addenda, exhibits, drawings [**where applicable**], acceptable portions of CONSULTANT'S submitted proposal, and change orders, shall all form essential parts of this Agreement. The foregoing documents constitute the entire Agreement of the parties pertaining to the Project hereof and is intended as a complete and exclusive statement of promises, representations, discussions and agreements oral or otherwise that have been made in connection therewith. No modifications or amendment to this Agreement shall be binding upon the parties unless the same is in writing, conform to Fulton County Policy and Procedure 800-6 governing change orders, is signed by the COUNTY'S and the CONSULTANT'S duly authorized representatives, and entered upon the meeting minutes of the Fulton County Board of Commissioners.

If any portion of the Contract Documents shall be in conflict with any other portion, the various documents comprising the Contract Documents shall govern in the following order of precedence: 1) the Agreement, 2) the RFP, 3) any Addenda, 4) change orders, 5) the exhibits, and 6) portions of CONSULTANT'S proposal that was accepted by the county and made a part of the Contract Documents.

ARTICLE 2. **SEVERABILITY:** If any provision of this Agreement is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of the Agreement, which shall remain in full force and effect, and enforceable in accordance with its terms.

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ARTICLE 3. **DESCRIPTION OF PROJECT:** COUNTY and CONSULTANT agree the PROJECT is as described in Exhibit “A”, entitled, “Scope of Services,” included on unnumbered page 6 of the County’s RFP along with appropriate and responsive aspects of CONSULTANT’S Proposal.” All exhibits referenced in this Agreement are incorporated by reference and constitute an integral part of this Agreement as if they were contained herein.

ARTICLE 4. **SCOPE OF SERVICES:** Unless modified in writing by both parties in the manner specified in the Agreement, duties of CONSULTANT shall not be construed to exceed those services specifically set forth herein. CONSULTANT agrees to provide all services, products, and data and to perform all tasks described in Exhibit “A” entitled, “Scope of Services,” Article 3 above.

ARTICLE 5. **DELIVERABLES:** CONSULTANT shall deliver to COUNTY all reports, specifications and drawings prepared under the terms of this AGREEMENT that are specified in the Agreement. CONSULTANT shall provide to COUNTY all deliverables specified in the Agreement. Deliverables shall be furnished to COUNTY by CONSULTANT in a media of form that is acceptable and usable by COUNTY at no additional cost at the end of the Project.

ARTICLE 6. **SERVICES PROVIDED BY COUNTY:** CONSULTANT shall gather from COUNTY all available non-privileged data and information pertinent to the performance of the services for the Project. Certain services as described in Exhibit “A,” if required, will be performed and furnished by COUNTY in a timely manner so as not to unduly delay CONSULTANT in the performance of said obligations. COUNTY shall have the final decision as to what data and information is pertinent.

COUNTY will appoint in writing a COUNTY Authorized Representative with respect to work to be performed under this Agreement until COUNTY gives written notice of the appointment of a successor. The COUNTY’S Authorized Representative shall have complete authority to transmit instructions, receive information, and define COUNTY’S policies, consistent with COUNTY rules and regulations. CONSULTANT may rely upon written consents and approvals signed by COUNTY’S Authorized Representative that are consistent with COUNTY rules and regulations.

**ARTICLE 7. MODIFICATIONS/CHANGE ORDERS:** If during the course of performing the Project, COUNTY and CONSULTANT agree that it is necessary to make changes in the Project, such changes will be incorporated by written Change Order and/or supplemental agreements to this AGREEMENT. Any such Change Order and/or supplemental shall not become effective or binding unless approved by the Board of Commissioners and entered on the minutes. Such modifications shall conform to the requirements of Fulton County Policy 800-6, which is incorporated by reference herein.

**[ARTICLE 8 IS OPTIONAL; ONLY USE WHERE THE WORK IS BROKEN UP INTO TASKS WHERE EACH TASK REQUIRE A NOTICE TO PROCEED FROM THE COUNTY]**

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ARTICLE 8. SCHEDULE OF WORK: CONSULTANT shall not proceed to furnish such services and COUNTY shall not become obligated to pay for same until a written authorization to proceed (Notice to Proceed) has been sent to CONSULTANT from COUNTY. Services shall be furnished in accordance with the CONSULTANT'S schedule as presented in Exhibit "\_\_\_" entitled, - "Schedule of Work". The CONSULTANT shall begin work under this Agreement no later than five (5) days after the effective date of notification to proceed.

**[OPTIONAL; WHERE APPLICABLE]**

A stop work order issued to the CONSULTANT shall be the only means of suspending the time

of performance of work under the Agreement. The time of performance of work as reference on

Exhibit "\_\_\_" does not include time for reviews for the project by the County, it's authorized

representative, \_\_\_\_\_ or any other agencies reviewing the project. Time charges shall cease

when a phase specified in the engineering fee proposal has been completed to the satisfaction of

the COUNTY'S authorized representative.

**[OPTIONAL; WHERE APPLICABLE]**

The COUNTY'S Authorized Representative with respect to the Project shall issue a stop work

order for the time of performance for work to the CONSULTANT once all tasks of each phase

is considered accepted and fulfilled as specified in the engineering fee proposal. A notice to

proceed shall be issued to the CONSULTANT for the next phase of work and shall address the

total time of performance of work remaining on the contract.

ARTICLE 9. CONTRACT TERM:

ELDRIDGE, HOW WILL THIS BE FUNDED? HOW WAS IT PRESENTED TO THE BOC, AS TO FUNDING? FOR INSTANCE, DID YOU ENCUMBER ALL OF THE FUNDS UP FRONT TO COVER THE JULY 1, 2005 TO JULY 1, 2006 PERIOD. YOU ARE AWARE THAT ALL FUNDING GOES TO ZERO ON DECEMBER 31, AND YOU MAY HAVE TO DO A RENEWAL UNLESS THE ENTIRE FUNDS WERE ENCUREMBERED FOR THE CONTRACT TERM. [NOTE: ARTICLE 9 WILL CHANGE DEPENDING ON FUNDING SOURCE]

The term of this Agreement shall commence within the year of execution and continue for a total of 12 calendar months. The COUNTY reserves the right to renew the contract for a total of \_\_\_\_ (\_\_\_\_) consecutive one-year periods, subject to the allocation of funding for such successive calendar year, and satisfactory contractor's performance and defined elsewhere in the contract. Non renewal of the Agreement shall not result in a claim for payment or damages by Consultant,

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except that the Consultant shall be paid for actual services rendered through the date of termination.

**ARTICLE 10. COMPENSATION AND PAYMENT FOR CONSULTANT SERVICES:**

Compensation for work performed by CONSULTANT on PROJECT shall be on the basis of rates shown in Section \_\_\_\_ .

The total contract amount for the Project shall not exceed \$\_\_\_\_\_.00, which is full payment for a complete scope of services. Invoices for payment shall be submitted to COUNTY by the first (1st) calendar day of the month to facilitate processing for payment in that same month. Invoices received after the first (1st) calendar day of the month may not be paid until the last day of the following month.

The CONSULTANT may submit to the COUNTY, an invoice, in a form acceptable to the COUNTY and accompanied by all support documentation requested by the COUNTY, for payment and for services that were completed during the preceding phase. The COUNTY shall review for approval said invoices. The COUNTY shall have the right not to pay any invoice or part thereof if not properly supported, or if the costs requested or a part thereof, as determined by the COUNTY, are reasonably in excess of the actual stage of completion. Disputes concerning the payment of submitted invoices shall be resolved pursuant to the dispute process outlined in Article 13. The COUNTY shall pay each such invoice or portion thereof as approved, provided that the approval or payment of any such invoice shall not be considered to be evidence of the performance of the CONSULTANT to the point indicated by such invoice, or receipt of acceptance by the COUNTY of the services covered by such invoice. The COUNTY shall promptly pay any undisputed items contained in such invoices. As a minimum, each invoice shall include a narrative describing the total work accomplished for each phase, an accurate updated schedule, a description of the percentage of total work completed for each phase through the date of the statement, and an updated draw-down of the Task-Discipline Matrix submitted with the CONSULTANT'S cost proposal.

The consultant must certify in writing that all subconsultants of the CONSULTANT and suppliers have been promptly paid for work and materials and previous progress payments received. In the event the prime consultant is unable to pay sub subconsultants or suppliers until it has received a progress payment from Fulton County, the prime consultant shall pay all subconsultants or suppliers funds due from said progress payments within forty-eight (48) hours of receipt of payment from Fulton County and in no event later than fifteen days as provided for by State Law.

CONSULTANT agrees that the compensation provided within shall be full and final settlement of all claims arising against COUNTY for work done, materials furnished, cost incurred or otherwise arising out of this AGREEMENT and shall release COUNTY from any and all further claims related to payment for services and materials furnished in connection with this Agreement.

County shall not be responsible for any interest penalty for any late payment.

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ARTICLE 11. **PERSONNEL AND EQUIPMENT:** CONSULTANT shall identify in writing a project manager who shall have sole authority to represent CONSULTANT on all manners pertaining to this contract.

CONSULTANT represents that it has secured or will secure, at its' own expense, all equipment and personnel necessary to complete this Agreement, none of whom shall be employees of or have any contractual relationship with COUNTY. All of the services required hereunder will be performed by CONSULTANT under his supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under law to perform such services.

Key personnel, including subcontractors, engaged in performing services for CONSULTANT under this Agreement are indicated in Exhibit \_\_ entitled, - "Key Personnel Listing." Written notification shall be immediately provided to COUNTY upon change or severance of any listed key personnel or subcontractor performing services on this Project by CONSULTANT. No changes or substitutions shall be permitted in CONSULTANT'S key personnel or subcontractor as set forth herein without the prior written approval of the COUNTY. Requests for changes in key personnel or subcontractors will not be unreasonably withheld by COUNTY. Changing of key personnel or subcontractor during the course of this Project shall constitute a cause for termination under the terms outlined in **ARTICLE 14. TERMINATION OF AGREEMENT FOR CAUSE** of this AGREEMENT.

CONSULTANT shall employ those people, who are in responsible charge of supervision on the work performed on this Project, duly registered in the State of Georgia in the appropriate area.

CONSULTANT shall endorse all deliverables including reports, and contract plans. Such endorsements shall be made by a person duly registered for such services by the governing authority authorized by the State of Georgia, being in the full employ of CONSULTANT and responsible for the work prescribed by this Agreement.

ARTICLE 12. **SUSPENSION OF WORK:** COUNTY may order CONSULTANT in writing to suspend, delay or interrupt all or any part of the work for such period of time as he may determine appropriate for the convenience of COUNTY, or for delays caused by third parties not in any way affiliated with the CONSULTANT. The time for completion of the Project shall be extended by the number of days the work is suspended. COUNTY shall not be responsible for any claims, damages or cost stemming from any delay of the project.

ARTICLE 13. **DISPUTES:** Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement shall be decided by the COUNTY'S Authorized Representative. The representative shall reduce the decision to writing and mail or otherwise furnish a copy thereof to the CONSULTANT. The CONSULTANT shall have 30 days from date of receipt to appeal the decision to the County Manager or his designee by mailing or otherwise furnishing to the County Manager or designee, copy of the written appeal. The decision of the County Manager or his designee for the determination of such appeal shall be final and conclusive. This condition shall not be pleaded in any suit involving a question of fact arising under this Agreement, unless the same is fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith,

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or is not supported by substantial evidence. In connection with any appeal proceeding under this clause, CONSULTANT shall be afforded an opportunity to be heard and to offer evidence in support of an appeal. Pending any final decision of a dispute hereunder, CONSULTANT shall proceed diligently with performance of the Agreement and in accordance with the Risk Manager.

ARTICLE 14. **TERMINATION OF AGREEMENT FOR CAUSE:** Either COUNTY or CONSULTANT may terminate work under this Agreement in the event the other party fails to perform in accordance with the provisions of the Agreement. Any party seeking to terminate this Agreement is required to give thirty (30) days prior written notice to the other party. Notice of termination shall be delivered by certified mail with receipt for delivery returned to the sender. The Risk Manager is expressly delegated with the authority, after consultation with the County Manager, to terminate the Agreement on behalf of COUNTY.

**TIME IS OF THE ESSENCE** and if the CONSULTANT refuses or fails to perform the work, maintain the scheduled level of effort as proposed and described in Exhibit “\_\_\_” entitled, - Schedule of Work, or any separable part thereof, with such diligence as will insure completion of the work within the specified time period, as more thoroughly described in Article 8 (**where Article 8 is a part of the Agreement**), or any extension or tolling there of, or fails to complete said work within such time. Failure to maintain the scheduled level of effort as proposed or deviation from the aforesaid proposal without prior approval of COUNTY, shall constitute cause for termination.

The COUNTY may, by written notice to CONSULTANT, terminate CONSULTANT’S right to proceed with the Project or such part of the Project as to which there has been delay. In such event, the COUNTY may take over the work and perform the same to completion, by contract or otherwise, and CONSULTANT shall be required to provide all copies of finished or unfinished documents prepared by CONSULTANT under this Agreement to the COUNTY as stated in Exhibit “\_\_\_” entitled, – Deliverables. CONSULTANT shall be entitled to receive compensation for any satisfactory work completed on such documents as reasonably determined by County. Whether or not the CONSULTANT’S right to proceed with the work has been terminated, the CONSULTANT shall be liable for any damage to the COUNTY resulting from the CONSULTANT’S refusal or failure to complete the work within the specified time period, and said damages shall include, but not be limited to, any additional costs associated with the COUNTY obtaining the services of another Consultant to complete the design of the project.

ARTICLE 15. **TERMINATION FOR CONVENIENCE OF COUNTY:** Notwithstanding any other provisions, COUNTY may terminate this Agreement for its convenience at any time by a written notice to CONSULTANT. If the Agreement is terminated for convenience by COUNTY as provided in this article, CONSULTANT will be paid compensation for those services actually performed. Partially completed tasks will be compensated for based on a signed statement of completion to be submitted by CONSULTANT which shall itemize each task element and briefly state what work has been completed and what work remains to be done. The Risk Manager is expressly delegated with the authority, after consultation with the County Manager, to terminate the Agreement on behalf of COUNTY.

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ARTICLE 16. **WAIVER OF BREACH:** The waiver by either party of a breach or violation of any provision of this Agreement, shall not operate or be construed to be, a waiver of any subsequent breach or violation of the same or other provision thereof.

ARTICLE 17. **INDEPENDENT CONTRACTOR:** CONSULTANT shall perform the services under this Agreement as an independent contractor and nothing contained herein shall be constructed to be inconsistent with relationship or status. Nothing in this Agreement shall be interpreted or construed to constitute CONSULTANT or any of its agents or employees to be the agent, employee or representative of COUNTY.

ARTICLE 18. **RESPONSIBILITY OF CONSULTANT:** CONSULTANT is employed to render a professional service only and any payments made to CONSULTANT are compensation solely for such services rendered and recommendations made in carrying out the work. CONSULTANT shall follow the practice of the \_\_\_\_\_ profession to make findings, opinions, factual presentations, professional advice and recommendations. Errors due to CONSULTANT'S failure to comply with standard engineering procedures shall be corrected in a time frame agreed to by COUNTY and at CONSULTANT'S expense.

ARTICLE 19. **COOPERATION WITH OTHER CONSULTANTS:** CONSULTANT will undertake the Project in cooperation with and in coordination with other studies, projects or related work performed for, with or by COUNTY'S employees, appointed committee(s) or other consultants. CONSULTANT shall fully cooperate with such other related consultants and COUNTY employees or appointed committees. CONSULTANT shall provide within his schedule of work, time and effort to coordinate with other consultants under contract with COUNTY. CONSULTANT shall not commit or permit any act, which will interfere with the performance of work by any other consultant or by COUNTY employees. CONSULTANT shall not be liable or responsible for the delays of third parties not under its control nor affiliated with the CONSULTANT in any manner.

ARTICLE 20. **ACCURACY OF WORK:** CONSULTANT shall be responsible for the accuracy of his work and shall promptly correct its errors and omissions without additional compensation. Acceptance of the work by the COUNTY will not relieve CONSULTANT of the responsibility of subsequent corrections of any errors and the clarification of any ambiguities. CONSULTANT shall prepare any plans, report, fieldwork, or data required by COUNTY to correct its errors or omissions. The above consultation, clarification or correction shall be made without added compensation to consultant. CONSULTANT shall give immediate attention to these changes so there will be a minimum of delay to others.

ARTICLE 21. **REVIEW OF WORK:** Authorized representatives of COUNTY may at all reasonable times review and inspect Project activities and data collected under this Agreement and amendments thereto. All reports, drawings, studies, specifications, estimates, maps and computations prepared by or for CONSULTANT, shall be available to authorized representatives of COUNTY for inspection and review at all reasonable times in the main office of COUNTY. Acceptance shall not relieve CONSULTANT of its professional obligation to correct, at its expense, any of its errors in work. COUNTY may request at any time and CONSULTANT shall

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produce progress prints or copies of any work as performed under this Agreement. Refusal by CONSULTANT to submit progress reports and/or plans shall be cause for COUNTY, without any liability thereof, to withhold payment to CONSULTANT until CONSULTANT complies with COUNTY'S request in this regard. COUNTY'S review recommendations shall be incorporated into the plans by CONSULTANT.

ARTICLE 22. **INDEMNIFICATION:** The CONSULTANT shall indemnify, defend and hold harmless the COUNTY, its officers, agents, employees and successors and assigns from and against any and all liability, loss, damages, claims, suits, liens, and judgments including attorneys fees, of whatever nature, including claims for contributions and/or indemnification, for injuries to or death or any person or persons, or damage to property or other rights of any person or persons caused by (1) any failure by the CONSULTANT to perform its obligations under this Agreement; (2) the negligent, intentional or willful misconduct of the CONSULTANT or any of its officers, directors, employees, representatives, agents or Subcontractors in connection with this Agreement; (3) CONSULTANT'S fault; or (4) the performance of the CONSULTANT'S obligations under this Agreement. The CONSULTANT shall also indemnify the COUNTY to the extent provided elsewhere in this Agreement. To the extent there is a determination that CONSULTANT has acted as an agent of the COUNTY, the CONSULTANT is specifically excluded from the term "agent" mentioned in the previous sentence, such that COUSULTANT will be required to comply with the requirements of this Article. CONSULTANT'S obligation to protect, defend, indemnify, and hold harmless, as set forth hereinabove, shall also include but not limited to any matter arising out of any actual or alleged infringement of any patent, trademark, copyright, or service mark, or any actual or alleged unfair competition disparagement of produce or service, or other business tort of any type whatsoever, or any actual or alleged violation of trade regulations. CONSULTANT shall not indemnify or hold harmless the COUNTY for the sole acts or omissions of employees or officers of the COUNTY.

CONSULTANT further agrees to protect, defend, indemnify and hold harmless COUNTY, its officers, agents and employees from and against any and all claims or liability for compensation under the Worker's Compensation Act arising out of injuries sustained by any employees of CONSULTANT. These CONSULTANT'S indemnities shall not be limited by reason of the listing of any insurance coverage.

These indemnity provisions are for the protection of the COUNTY indemnities only and shall not establish, of themselves, any liability to third parties. The provisions of this ARTICLE shall survive termination of this Agreement.

ARTICLE 23. **CONFIDENTIALITY:** CONSULTANT agrees that its conclusions and any reports are for the confidential information of COUNTY and that it will not disclose its conclusions in whole or in part to any persons whatsoever, other than to submit its written documentation to COUNTY, and will only discuss the same with it or its authorized representatives, except as required under this Agreement to provide information to the public. Upon completion of this Agreement term, all documents, reports, maps, data and studies prepared by consultant pursuant thereto and any equipment paid for by COUNTY as a result of this Agreement, shall become the property of COUNTY and be delivered to the Director of the DEPARTMENT.

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Articles, papers, bulletins, reports, or other materials reporting the plans, progress, analyses, or results and findings of the work conducted under this Agreement shall not be presented publicly or published without prior approval in writing of COUNTY.

It is further agreed that if any information concerning the Project, its conduct results, or data gathered or processed should be released by CONSULTANT without prior approval from COUNTY, the release of the same shall constitute grounds for termination of this Agreement without indemnity to CONSULTANT, but should any such information be released by COUNTY or by CONSULTANT with such prior written approval, the same shall be regarded as Public information and no longer subject to the restrictions of this Agreement.

**ARTICLE 24. OWNERSHIP OF INTELLECTUAL PROPERTY AND INFORMATION:** CONSULTANT agrees that Fulton County is the sole owner of all information, data, and materials (hereafter “Information”) that are developed or prepared subject to this Agreement. CONSULTANT or any Subcontractor is not allowed to use or sell such Information subject to this AGREEMENT for educational, publication, profit, research or any other purpose without the written and authorized consent of the Director of the Department of Public Works. All electronic files used in connection to this Agreement, which are by definition, any custom software developed by CONSULTANT, or commercially available software procured by CONSULTANT, pursuant to this Agreement, (collectively, the “Software”), shall be turned over to the COUNTY for its use after termination hereof and CONSULTANT shall have no interest of any kind in such electronic files. Any required licenses and fees for the Software or other required materials shall be purchased and/or paid for by CONSULTANT and registered in the name of the Director of the Department of Finance, if possible. The Software as defined hereunder, specifically excludes all software, documentation, information, and materials in which CONSULTANT has pre-existing proprietary rights and/or has otherwise been licensed to Consultant prior to this Agreement, and any upgrades, updates, modifications or enhancements thereto. CONSULTANT agrees to provide at no cost to COUNTY any upgrades to any Software used in connection with this Agreement which may be subsequently developed or upgraded for a period of three (3) years from the date of completion of the work under this Agreement, except in the case of commercial Software licensed to the COUNTY or Director of the Department of Finance. Any Information developed for use in connection with this Agreement may be released as public domain information by the COUNTY at its sole discretion.

**ARTICLE 25. COVENANT AGAINST CONTINGENT FEES:** CONSULTANT warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an Agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees maintained by CONSULTANT for the purpose of securing business and that CONSULTANT has not received any non-COUNTY fee related to this Agreement without the prior written consent of COUNTY. For breach or violation of this warranty, COUNTY shall have the right to annul this Agreement without liability or at its discretion to deduct from the Contract Price or consideration the full amount of such commission, percentage, brokerage or contingent fee.

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ARTICLE 26. **INSURANCE**: CONSULTANT shall furnish certificates to COUNTY for the following minimum amounts or levels of insurance coverage:

Section 1.01       **Workman's Compensation Insurance** in accordance with the laws of the State of Georgia and in an amount not less than Five Hundred Thousand Dollars (\$500,000) per employee, Five Hundred Thousand Dollars (\$500,000) per occurrence, and Five hundred Thousand Dollars (\$500,000) per employee per disease.

Section 1.02       **General Aggregate** in an amount not less than Two Million Dollars (\$2,000,000).

Section 1.03       **General Liability Insurance** in an amount not less than One Million Dollars (\$1,000,000) for bodily injury and/ or property damages per occurrence.

Section 1.04       **Professional Liability Insurance** in an amount that equals or exceeds the amount of fees for the AGREEMENT. If coverage is issued on a claims-made basis, a policy should be kept in force at least twenty-four (24) months after completion and acceptance of the PROJECT.

Section 1.05       **Comprehensive Automobile Liability Insurance**, including operation of owned, non-owned and hired automobiles, covering bodily injury and/or property damage with limits of One Million Dollars (\$1,000,000) per occurrence.

Section 1.06       **Valuable Papers Insurance** in an amount sufficient to assure the restoration of any plans, drawings, field notes, or other similar data relating to the work covered by the project and the Agreement.

All insurance shall contain a provision that the coverage afforded will not be canceled, materially changed, or renewal refused until at least thirty (30) days prior written notice has been given to COUNTY. All such insurance shall remain in effect until final payment is made and the project is accepted by COUNTY. If CONSULTANT receives notice of non-renewal or material adverse change of any of the above coverages, CONSULTANT will promptly advise COUNTY in writing. Failure of CONSULTANT to promptly notify COUNTY on non-renewal or material adverse change of any of the above coverages terminates Agreement as of the date that CONSULTANT should have given notification to COUNTY.

If COUNTY has any objections to the coverage afforded by or provisions of the insurance required to be purchased and maintained by CONSULTANT, COUNTY will notify CONSULTANT thereof within twenty (20) days of the date of delivery of such certificates to COUNTY.

CONSULTANT will provide to COUNTY such additional information in respect of insurance provided by him as COUNTY may reasonably request. The right of COUNTY to review and comment on Certificates of Insurance is not intended to relieve CONSULTANT of his responsibility to provide insurance coverage as specified nor to relieve CONSULTANT of his liability for any claims which might arise.

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**ARTICLE 27. PROHIBITED INTEREST:**

Section 27.1 Conflict of Interest: CONSULTANT agrees that it presently has no interest and shall acquire no interest direct or indirect that would conflict in any manner or degree with the performance of its service hereunder. CONSULTANT further agrees that, in the performance of the Agreement, no person having any such interest shall be employed.

Section 27.2 Interest of Public Officials: No member, officer or employee of COUNTY during his tenure shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

**ARTICLE 28. SUBCONTRACTING:** Except as identified in Exhibit “\_\_\_” entitled, - “Key Personnel Listing”, CONSULTANT shall not subcontract any part of the work covered by this Agreement or permit subcontracted work to be further subcontracted without prior written approval of COUNTY.

**ARTICLE 29. ASSIGNABILITY:** CONSULTANT shall not assign or subcontract this Agreement or any portion thereof without the prior expressed written consent of COUNTY. Any attempted assignment (including factoring arrangements) or subcontracting by CONSULTANT without the prior expressed written consent of COUNTY shall at COUNTY’S sole option terminate this Agreement without any notice to CONSULTANT of such termination. CONSULTANT binds itself, its successors, assigns, and legal representatives of such other party in respect to all covenants, Agreements and obligations contained herein.

**ARTICLE 30. ANTI-KICKBACK CLAUSE:** Salaries of engineers, surveyors, draftsmen, clerical and technicians performing work under this Agreement shall be paid unconditionally and not less often than once a month without deduction or rebate on any account except only such payroll deductions as are mandatory by law. CONSULTANT hereby promises to comply with all applicable "Anti-Kickback" Laws, and shall insert appropriate provisions in all subcontracts covering work under this Agreement.

**ARTICLE 31. AUDITS AND INSPECTORS:** At any time during normal business hours and as often as COUNTY may deem necessary, CONSULTANT shall make available to COUNTY and/or representatives of the COUNTY for examination all of its records with respect to all matters covered by this Agreement.

It shall also permit COUNTY and/or representative of the COUNTY to audit, examine and make copies, excerpts or transcripts from such records of personnel, conditions of employment and other data relating to all matters covered by this Agreement. CONSULTANT'S records of personnel, conditions of employment, and financial statements (hereinafter "Information") constitute trade secrets and are considered confidential and proprietary by CONSULTANT. To the extent COUNTY audits or examines such Information related to this Agreement, COUNTY shall not disclose or otherwise make available to third parties any such Information without CONSULTANT'S prior written consent unless required to do so by a court order. Nothing in this Agreement shall be construed as granting COUNTY any right to make copies, excerpts or transcripts of such Information outside the area covered by this Agreement without the prior

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written consent of CONSULTANT. CONSULTANT shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred on the Project and used in support of its proposal and shall make such material available at all reasonable times during the period of the Agreement and for three years from the date of final payment under the Agreement, for inspection by COUNTY or any reviewing agencies and copies thereof shall be furnished upon request and at no additional cost to COUNTY. CONSULTANT agrees that the provisions of this Article shall be included in any Agreements it may make with any subcontractor, assignee or transferee.

ARTICLE 32. **ACCOUNTING SYSTEM:** CONSULTANT shall have an accounting system, which is established, and maintaining in accordance with generally accepted accounting principles. CONSULTANT must account for cost in a manner consistent with generally accepted accounting procedures, as approved by Fulton County.

ARTICLE 33. **VERBAL AGREEMENT:** No verbal agreement or conversation with any officer, agent or employee of COUNTY either before, during or after the execution of this Agreement shall affect or modify any of the terms of obligations herein contained, nor shall such verbal agreement or conversation entitle CONSULTANT to any additional payment whatsoever under the terms of this Agreement. All changes to this shall be in writing and the form of a change order approved by the COUNTY, and entered on the Minutes of the Board of Commissioners.

ARTICLE 34. **NOTICES:** All notices shall be in writing and delivered in person or transmitted by certified mail, postage prepaid.

Notice to the COUNTY, shall be addressed as follows:

Department of Finance, Risk Management Division  
141 Pryor Street, S.W., Suite 7000  
Atlanta, Georgia 30303

Notices to CONSULTANT shall be addressed as follows:

ARTICLE 35. **JURISDICTION:** This Agreement shall be administered and interpreted under the laws of the State of Georgia. Jurisdiction of litigation arising from this Agreement shall be in that state. If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said laws, but the remainder of this Agreement shall be in full force and effect.

Whenever reference is made in the Agreement to standards or codes in accordance with which work is to be performed, the edition or revision of the standards or codes current on the effective date of this Agreement shall apply, unless otherwise expressly stated.

ARTICLE 36. **EQUAL EMPLOYMENT OPPORTUNITY:** During the performance of this Agreement, CONSULTANT agrees as follows:

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Section 36.1 CONSULTANT will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin;

Section 36.2 CONSULTANT will, in all solicitations or advertisements for employees placed by, or on behalf of, CONSULTANT state that all qualified applicants, will receive consideration for employment without regard to race, creed, color, sex or national origin;

Section 36.3 CONSULTANT will cause the foregoing provisions to be inserted in all subcontracts for any work covered by the Agreement so that such provision will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

ARTICLE 37. **FORCE MAJEURE:** Neither COUNTY nor CONSULTANT shall be deemed in violation of this AGREEMENT if either is prevented from performing its obligations hereunder for any reason beyond its control, including but not limited to acts of GOD, civil or military authority, act of public enemy, accidents, fires, explosions, earthquakes, floods or catastrophic failures of public transportation, provided however, that nothing herein shall relieve or be construed to relieve CONSULTANT from performing its obligations hereunder in the event of riots, rebellions or legal strikes.

ARTICLE 38. **OPEN RECORDS ACT:** The Georgia Open Records Act, O. C.G.A. Section 50-18-70 et seq., applies to this AGREEMENT. The CONSULTANT acknowledges that any documents or computerized data provided to the COUNTY by the Consultant may be subject to release to the public. The CONSULTANT also acknowledges that documents and computerized data created or held by The CONSULTANT in relation to the Agreement may be subject to release to the public, to include documents turned over to the COUNTY. The CONSULTANT shall cooperate with and provide assistance to the COUNTY in rapidly responding to Open Records Act requests. The CONSULTANT shall notify the COUNTY of any Open Records Act requests no later than 24 hours following receipt of any such requests by the CONSULTANT. The CONSULTANT shall promptly comply with the instructions or requests of the COUNTY in relation to responding to Open Records Act requests.

ARTICLE 39. **CONSULTANT'S COMPLIANCE WITH ALL ASSURANCES AND/OR PROMISES MADE IN RESPONSE TO PROCUREMENT:** Should any proposer (bidder) submit a response to the County promising to provide a certain level of service for either the scope of work, MFBE participation, or any other matter, including where such promise or assurance is greater than what is required by the procurement documents, and should this response containing the promise or assurance be accepted by the County and made a part of the Contract Documents, then this degree or level of service promised by the proposer (bidder) relating to the scope of work, MFBE participation, or other matter shall be considered to be a material part of the Agreement between the proposer (bidder) and the County, such that the proposer's (bidder's) failure to provide the agreed upon degree or level of service or participation shall be a material breach of the Agreement giving the County just cause to terminate the Agreement for cause, pursuant to Article 14 of the Agreement.

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WITNESS WHEREOF, each of the parties hereto has caused **Agreement** to be executed and delivered on this, the \_\_\_\_\_ day of \_\_\_\_\_, 2005.

Attest:

\_\_\_\_\_ By: \_\_\_\_\_

Title: \_\_\_\_\_

Seal (Affix)

Attest:

**FULTON COUNTY, GEORGIA**

\_\_\_\_\_ By: \_\_\_\_\_  
Mark Massey, Clerk to the Commission Chair, Karen Handel  
Board of Commissioners

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

By: \_\_\_\_\_ By: \_\_\_\_\_  
Office of County Attorney Department of Finance, Risk  
Management Division]

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**SAMPLE FINAL AFFIDAVIT**

TO FULTON COUNTY, GEORGIA

I, \_\_\_\_\_, hereby certify that all suppliers of materials, equipment and service, subcontractors, mechanic, and laborers employed by \_\_\_\_\_ or any of his subcontractors in connection with the design and/or construction of \_\_\_\_\_ at Fulton County have been paid and satisfied in full as of \_\_\_\_\_, 20\_\_\_\_, and that there are no outstanding obligations or claims of any kind for the payment of which Fulton County on the above-named Project might be liable, or subject to, in any lawful proceeding at law or in equity.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

Personally appeared before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.  
\_\_\_\_\_, who under Oath deposes and says that he is  
\_\_\_\_\_ of the firm of \_\_\_\_\_, that he has read the  
above statement and that to the best of his knowledge and belief same is an exact true statement.

\_\_\_\_\_  
Notary Public

Commission expires:

\_\_\_\_\_